1411

SUPREME COURT OF THE UNITED STATES.

No. 47.

JOSEPH FELLOWS, SURVIVOR OF ROBERT KENDLE, PLAINTIFF IN ERROR,

vs.

SUSAN BLACKSMITH AND ELY S. PARKER, ADMINISTRATORS OF JOHN BLACKSMITH, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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GIDEON, Print.

1412

[SEAL.] *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Susan Blacksmith and Ely S. Parker, administrators of the goods, chattels, and credits of John Blacksmith, deceased, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at a term thereof, to be holden in Washington on the first Monday of December next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of New York, at Batavia, in said State, wherein Joseph Fellows, survivor of Robert Kendle, is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the honorable Samuel Nelson, one of the justices of the said Supreme Court of the United States, this 27th day of February, in the year of our Lord 1855. S. NELSON.

SUPREME COURT OF THE UNITED STATES.

JOSEPH FELLOWS, SURVIVOR, &c., pl'ff in error,
vs.
SUSAN BLACKSMITH AND ELY S. PARKER, ADMINISTRATORS, &c., OF JOHN BLACKSMITH, deceased, def't in error.

UNITED STATES OF AMERICA,
Northern district of New York, ss:

Joshua L. Brown, of Batavia, in the county of Genesee, in said northern district, being duly sworn, doth depose and say: That he did, on the 22d day of September, 1855, at the city of Buffalo, in said district, personally deliver to, and leave with, the above named Ely S. Parker, one of the defendants in error, a copy of the foregoing original citation, and at the same time showed him the said original; and that he did, on the 22d day of October, 1855, at the town of Alabama, in said district, personally deliver to, and leave with, Susan Blacksmith, the other defendant in error named in said citation, a copy of the same citation, and at the same time showed her the said original; and that he knows the persons so served to be the defendants in error, in said citation named; and further saith not.

J. L. BROWN.

Subscribed and sworn to before me this 29th day of October, A.D. 1855.

In witness whereof, I have hereunto signed my name and affixed the seal of the district court of the United States for the northern district of New York. [SEAL.]

AMELIAN CONKLIN,
Clerk and ex-officio Commissioner of the U. S.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America, to the Justices of the Supreme Court of the State of New York, greeting:

Because in the record and proceedings, and also in the rendition of a judgment by the court of appeals of the said State of New York, in a plea which was lately in said last mentioned court, before the judges thereof, between John Blacksmith, respondent, and Robert Kendle and Joseph Fellows, appellants, which said John Blacksmith is since deceased intestate, and administration of whose goods, chattels, and credits has, since his death, been granted in due form of law to Susan Blacksmith and Ely S. Parker; and which said Robert Kendle is since deceased intestate, and of whose goods, chattels, and credits no administration hath been granted; the record of which said proceedings and judgment of the said court of appeals, together with the judgment of the same court in the premises, hath by the said court of appeals been remitted to, and now remain in, the said supreme court before you, as it is said manifest error hath happened to the great damage of the said Joseph Fellows, who survives the said Robert Kendle, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given by the said court of appeals, and the same with the record and proceedings aforesaid be remitted to and remain in the said supreme court of said State before you; that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 15th day of February, in the year of our Lord one thousand eight hundred and fifty-five.

WM. THOS. CARROLL,
Cl'k Sup. Ct. U. S.
HENRY J. GLOWACKI,
Attorney for Pl'ff in Error.

To the Justices of the Supreme Court of the United States:

STATE OF NEW YORK, *ss:*

The answer of the justices of the supreme court of the State of New York, to the within writ of error, appears by the schedule hereunto

annexed, containing a transcript of the records and proceedings whereof mention is within made, which we certify under the seal of our said court to the justices of the Supreme Court of the United States within mentioned, at the day and place within contained, as within we are commanded.

By the court.

[SEAL.] M. G. SOPER, *Clerk.*

Allowed.

S. NELSON.

Feb'y 27, 1855.

Schedule.

To the Judges of the Court of Appeals.

GENESEE COUNTY, *ss:*

The answer of the justices of the supreme court to the within appeal.

By the court.

M. G. SOPER, *Clerk.*

GENESEE, CLERK'S OFFICE, *ss:*

I certify that I have compared the within copy of notice of appeal and the annexed copy of judgment-roll with the respective originals thereof on file in this office, and that said copies are respectively correct transcripts therefrom, and of the whole of said respective originals.

In testimony whereof, I have hereunto set my hand and affixed the seal of the supreme court for said county, the [L. S.] 11th day of January, 1851.

M. G. SOPER, *Clerk.*

SUPREME COURT.

ROBERT KENDLE AND JOSEPH FELLOWS ads. JOHN BLACKSMITH.

Take notice, that the defendants in this cause have appealed and do appeal to the court of appeals from the judgment rendered against them herein, the record whereof was filed in your office on the 13th day of December, instant. Yours, &c.,

J. L. BROWN,
Att'y for Def'ts, the Appellants.

To the Clerk of Genesee county.

December 24th, 1850.

Filed 25th December, 1850.

Pleas in the Supreme Court of Judicature of the people of the State of New York, before the justices of the said court, at the Academy in the city of Utica, on the first Monday of July, in the term of July, in the year of our Lord one thousand eight hundred and forty-six. Witness Greene C. Bronson, esq., chief justice.

R. MONELL, *Clerk.*

GENESEE COUNTY, *to wit:*

Be it remembered, that on the sixteenth day of July, in the term of July, one thousand eight hundred and forty-six, before the justices of the late supreme court of judicature of the people of the State of New York, at the Academy in the city of Utica, came John Blacksmith, plaintiff, by Isaac A. Verplanck, his attorney, and brought into the said court, before the aforesaid justices thereof then there, his certain declaration against Robert Kendle and Joseph Fellows, in an action of trespass, and commenced his suit by the filing and service of such declaration, without previous process, according to the form of the statute in such case made and provided, which said declaration is in the words following, that is to say:

GENESEE COUNTY, *ss:*

John Blacksmith, plaintiff in this suit, by Isaac A. Verplanck, his attorney, complains of Robert Kendle and Joseph Fellows, defendants in this suit, by filing declaration and not by writ. For that the said defendants, on the 13th day of July, in the year one thousand eight hundred and forty-six, at the town of Pembroke, in the county of Genesee aforesaid, to wit, at Batavia, in the said county of Genesee, with force and arms, made an assault upon the said plaintiff, and did then and there beat, wound and ill-treat him, and other injuries to him then and there did against the peace of the people of this State, and to the great damage of the said plaintiff.

And also for that they, the said defendants, on the same day and year, and at the place last aforesaid, with force and arms, broke and entered the close of the plaintiff there situated, which said close is commonly called and known as the Indian saw-mill, and contains the said saw-mill, and the dam and yard belonging thereto; and then and there ejected, expelled, put out and amoved the said plaintiff from the possession, use, occupation and enjoyment of the said saw-mill and dam and yard, and kept and continued him so ejected, expelled, put out and amoved, for a long space of time, to wit, from thence hitherto, whereby the said plaintiff, for and during all that time, lost and was deprived of the use and benefit of his said saw-mill and dam and yard, to wit, at the place last aforesaid, all of which is to the damage of the said plaintiff of five thousand dollars, and therefore he brings his suit.

And the said defendants, Robert Kendle and Joseph Fellows, by Joshua L. Brown, their attorney, come and defend the force and injury, when, &c., and say that they are not guilty of the said supposed trespasses in the said declaration above laid to their charge, or any or either

of them, or any part thereof, in manner and form as the said plaintiff hath above thereof, in his said declaration, complained against them; and of this they put themselves upon the country, and the said plaintiff doth the like, &c.

And for a further plea in this behalf as to the said supposed trespasses, in the said second count of the said declaration mentioned, the said defendants, by leave of the court now here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say, that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said close in the said second count of the said declaration mentioned, and in which, &c., now is, and at the said time, when, &c., in the said second count mentioned, was the close, soil and freehold of the said defendant, Joseph Fellows, to wit, at Pembroke, aforesaid; wherefore the said defendant, Joseph Fellows, in his own right, and the said defendant, Robert Kendle, as the servant of the said Joseph Fellows, and by his command, at the same time, when, &c., in the said second count mentioned, broke and entered the said close in the said second count mentioned, in which, &c., so being the close, soil, and freehold of the said defendant, Joseph Fellows, as they lawfully might for the cause aforesaid, which are the said supposed trespasses whereof the said plaintiff hath above thereof in the said second count complained against them; and this they are ready to verify, wherefore they pray judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

And as to the said plea of the said defendants, by them secondly above pleaded, the said plaintiff saith that he ought not to be barred from having and maintaining his aforesaid action thereof against them, the said defendants, because the said plaintiff saith that the said close in the said second count of the said declaration mentioned, in which, &c., at the said time, &c., was not, and is not, now the close, soil, and freehold of the said defendant, Joseph Fellows; and this the said plaintiff prays may be inquired of by the country, and the said defendants do the like, &c.

And hereupon the process thereof is continued between the parties aforesaid of the plea aforesaid, in this same court, before the justices thereof, until the first Monday of July, in the year of our Lord one thousand eight hundred and forty-eight, at the Academy in the city of Utica. The same day is given to the parties aforesaid at the same place. At which last-mentioned day and place come the parties aforesaid by their respective attorneys aforesaid.

And hereupon it is suggested and made to appear, that by the constitution of the State of New York, and by force of the statutes in such case made and provided, this action, and the pleas, process and proceedings therein, became transferred to, and fully vested in, the supreme court of the State of New York, which said court then, there, and thereby became fully possessed of jurisdiction of said pleas, process, proceedings and of the parties aforesaid.

And hereupon the process thereof is continued between the parties aforesaid of the plea aforesaid, in this same court, before the justices thereof. And the issue above joined is ordered by the said court to be tried at the circuit court, appointed to be held at the court-house in the village of Batavia, in the said county of Genesee, on the twenty-eighth day of August, one thousand eight hundred and forty-nine.

At which day and place last aforesaid come the parties aforesaid, by their attorneys aforesaid, before Seth E. Sill, esquire, one of the justices of this court, assigned to hold the said circuit court for the said county of Genesee. And the jurors of the jury summoned to try the said issues being called also come, who, to speak the truth of the matter aforesaid, being chosen, tried and sworn, say, upon their oaths, that the said defendants are guilty of the said trespasses within laid to their charge, in manner and form as the said plaintiff hath within thereof complained against them; and that the said close, at the time, when, &c., was not the close, soil and freehold of the said defendant, Joseph Fellows; and that they assess the damages of the plaintiff on occasion of the premises at eight hundred and twenty-five dollars, over and above the costs and charges of the plaintiff in this behalf laid out and expended, and for those costs and charges to six cents.

And hereupon the said defendants bring into court a certain bill of exceptions taken at the said trial, and pray that the same may be entered upon the record and proceedings in this cause, and it is granted unto them, &c. And hereupon the said bill of exceptions is enrolled in the words and figures following, that is to say:

IN THE SUPREME COURT OF THE STATE OF NEW YORK.

ROBERT KENDLE AND JOSEPH FELLOWS ads. JOHN BLACKSMITH.

Defendants' Bill of Exceptions.

This is an action of trespass.

The pleadings are as follows:

GENESEE COUNTY, *ss:*

John Blacksmith, plaintiff in this suit, by Isaac A. Verplanck, his attorney, complains of Robert Kendle and Joseph Fellows, defendants in this suit, by filing declaration and not by writ. For that the said defendants, on the 13th day of July, in the year one thousand eight hundred and forty-six, at the town of Pembroke, in the county of Genesee aforesaid, to wit, at Batavia, in the said county of Genesee, with force and arms, made an assault upon the said plaintiff, and did then and there beat, wound and ill-treat him, and other injuries to him then and there did against the peace of the people of this State, and to the great damage of the said plaintiff.

And also for that they, the said defendants, on the same day and

year, and at the place last aforesaid, with force and arms, broke and entered the close of the plaintiff there situated, which said close is commonly called and known as the Indian saw-mill, and contains the said saw-mill, and the dam and yard belonging thereto, and then and there ejected, expelled, put out and amoved the said plaintiff from the possession, use, occupation and enjoyment of the said saw-mill and dam and yard, and kept and continued him so ejected, expelled, put out and amoved for a long space of time, to wit, from thence hitherto, whereby the said plaintiff for and during all that time, lost and was deprived of the use and benefit of his said saw-mill and dam and yard, to wit, at the place last aforesaid, all of which is to the damage of the said plaintiff of five thousand dollars, and therefore he brings his suit.

And the said defendants, Robert Kendle and Joseph Fellows, by Joshua L. Brown, their attorney, come and defend the force and injury, when, &c., and say that they are not guilty of the said supposed trespasses, in the said declaration above laid to their charge, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof, in his said declaration, complained against them; and of this they put themselves upon the country, and the said plaintiff doth the like, &c.

And for a further plea in this behalf as to the said supposed trespasses, in the said second count of the said declaration mentioned, the said defendants by leave of the court now here for this purpose, first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said close in the said second count of the said declaration mentioned, and in which, &c., now is, and at the said time when, &c., in the said second count mentioned was, the close, soil and freehold of the said defendant, Joseph Fellows, to wit, at Pembroke aforesaid; wherefore the said defendant, Joseph Fellows, in his own right, and the said defendant, Robert Kendle, as the servant of the said Joseph Fellows, and by his command, at the said time when, &c., in the said second count mentioned, broke and entered the said close in the said second count mentioned, in which, &c., so being the close, soil, and freehold of the said defendant, Joseph Fellows, as they lawfully might for the cause aforesaid, which are the said supposed trespasses whereof the said plaintiff hath above thereof in the said second count complained against them, and this they are ready to verify; wherefore they pray judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

And as to the said plea of the said defendants by them secondly above pleaded, the said plaintiff saith that he ought not to be barred from having and maintaining his aforesaid action thereof against them, the said defendants, because the said plaintiff saith that the said close in the said second count of the said declaration mentioned, in which, &c., at the said time when, &c., was not and is not now the close, soil and freehold of the said defendant, Joseph Fellows; and this the

said plaintiff prays may be inquired of by the country, and the said defendants do the like, &c.

The issues joined in the cause were tried, by a jury empanneled for the purpose, at a circuit court held at the court-house in Batavia, in the county of Genesee, by and before the Honorable Seth E. Sill, one of the justices of the supreme court, on the 28th day of August, 1849.

On the trial of the said issues before the said court and jury, it was proved on the part of the plaintiff that the close mentioned in the second count of the declaration is situate in the town of Pembroke, in the county of Genesee, upon the tract of land of 12,800 acres, commonly known and designated by the name of the Tonawanda reservation; that the close in question is, and was at the time of the entry complained of, and at the time of the commencement of the suit, an Indian improvement upon the said Tonawanda reservation; that the said improvement was made about twenty years ago, by the plaintiff and seven other Tonawanda Indians; that the plaintiff is a native Indian, belonging to the Tonawanda band of Seneca Indians, who reside on the Tonawanda reservation, and are distinguished as the Tonawanda band of the Senecas, and are a part of the Seneca Nation, and which band has been so distinguished for at least thirty-six years; that he has resided on that reservation with the Tonawanda band from his birth; that the plaintiff was in actual possession of the said improvement at the time of the entry complained of in the declaration; that on the 13th day of July, 1846, the defendants entered into and took possession of the said close, and turned the plaintiff out, and in doing this committed an assault upon him.

The plaintiff then rested, and in doing so admitted that the Tonawanda reservation is one of the tracts of land reserved by the Seneca Nation of Indians, in the treaty of Genesee, of 1797; (to be found in Bioren & Duane's edition of the laws of U. S., at page 379.)

The defendants' counsel then requested the said circuit court to decide that the action could not be maintained upon the second count of the declaration by the plaintiff, an individual Seneca Indian, and to nonsuit the plaintiff as to the said second count. But the said circuit court overruled the said proposition of the defendants' counsel, and refused so to decide, or to nonsuit the plaintiff as to the said second count. To which ruling and refusal the defendants then and there accepted.

The defendants' counsel then read in evidence, on the part and behalf of the defendants, an act of the legislature of the State of New York, whereof a copy is set forth in schedule "A" annexed to, and made part of, this bill of exceptions; also a duly authenticated copy (from the office of the secretary of State of the State of New York) of the mutual agreement and act of cession between the State of New York and the commonwealth of Massachusetts, of which mutual agreement and act of cession a copy is set forth in schedule "B," annexed to and made part of this bill of exceptions;

Also a duly authenticated copy of the proceedings of the legislature

of the State of New York relative to the said mutual agreement and act of cession, of which proceedings a copy is set forth in schedule "C," annexed to and made part of this bill of exceptions;

Also a public treaty made between the United States of America and the Six Nations of Indians, bearing date the 11th day of November, 1794, which treaty was read from a printed volume of the laws of the United States, published by authority, and either party is at liberty to refer to, and read the same as printed in the laws of the United States, and the same is to be deemed and taken to be a part of this bill of exceptions the same as if herein inserted, (and for convenience a copy of the third article of said treaty is set forth in schedule "D" hereto annexed;)

Also the treaty between the United States of America and the New York Indians, bearing date the 15th day of January, 1838, which was also read from a printed volume of the laws of the United States published by authority; and either party is at liberty to refer to and read the same from any volume of such laws, and the same is to be deemed and taken to be a part of this bill of exceptions, the same as if herein inserted, (and for convenience a copy of the 10th article of said treaty, and of the indenture referred to in said 10th article, and annexed to said treaty, is set forth in schedule E hereto annexed;)

Also a duly authenticated copy of certain concurrent resolutions of the legislature of the commonwealth of Massachusetts, of which resolutions a copy is set forth in schedule "F," annexed to and made part of this bill of exceptions;

Also an original act of the governor and council of the commonwealth of Massachusetts, under the great seal of the said commonwealth, with the certificate of the recording thereof in the office of the Secretary of State of the State of New York thereon endorsed, of which original act and certificate of recording thereof a copy set forth in schedule "G," annexed to and made part of this bill of exceptions;

Also the public treaty made between the United States of America and the Seneca Nation of Indians, bearing date the 20th of May, 1842, which treaty was read from a printed volume of laws of the United States published by authority, and either party is at liberty to refer to and read the same as printed in the said laws, and the same is to be deemed and taken to be a part of this bill of exceptions the same as if herein inserted, (and for convenience a copy of the same, omitting the signatures and indenture therein set forth, is set forth in schedule "H" hereto annexed;) .

Also the indenture recited and set forth in said last mentioned treaty, with the signatures thereto, and the certificates thereon endorsed, and a copy of the same including such signatures and certificates, is set forth in schedule "I," annexed to and made part of this bill of exceptions;

Also an original act of the governor and council of the commonwealth of Massachusetts, under the great seal of the said commonwealth, with the certificate of the recording thereof in the office of the Secretary of State of the State of New York thereon endorsed, a copy of which

original act, (omitting the copy of indenture and certificate of approval of such indenture annexed to it,) and of the certificate of the recording thereof aforesaid thereon endorsed, is set forth in schedule "K," annexed to and made part of this bill of exceptions;

Also duly authenticated copies of certain documents in the office of the Department of War of the United States, whereof copies are set forth in schedule "L," annexed to and made part of this bill of exceptions.

The defendants' counsel then proved on the part and behalf of the defendants, by the testimony of Stephen Osborne, that he the said Osborne was the Indian agent of the Government of the United States for the State of New York, from the year 1842, to and including a part of the year 1846, and that Thomas C. Love acted as one of the arbitrators under the said treaty of May 20th, 1842; and it was here admitted by the plaintiff that Ira Cook was named and appointed arbitrator under the same treaty by and on the part of the said Thomas L. Ogden and Joseph Fellows.

The defendants' counsel then read in evidence, on the part and behalf of the defendants, an original report and award, under the hands and seals of the said Thomas C. Love and Ira Cook, and by them duly acknowledged, a copy of which, (omitting the schedules referred to in the body of it,) and of the certificates of acknowledgment thereof, is set forth in schedule "M," annexed to and made part of this bill of exceptions;

Also a duly authenticated copy from the office of the Department of War of the United States, of a duplicate original report and award of said Love and Cook, (in all things like unto the original, so read in evidence as aforesaid,) and of the endorsement thereon of the filing thereof in the office of the said Department of War, which endorsement is as follows:

"L. 201, Rec. April 1, '44." } In red ink.
Indian Office. }
Rec'd 1st April, 1844. In black ink.

Also duly authenticated copies of documents remaining in the Department of the Treasury of the United States, copies of which documents are set forth in schedule "N," annexed to and made part of this bill of exceptions.

The defendants' counsel then proved on the part and behalf of the defendants, by the testimony of the witness, Stephen Osborne, that he received from the said Thomas L. Ogden and Joseph Fellows, and the survivor of them, the sum of forty-three thousand seven hundred and fifty dollars and sixty cents of the money awarded to be paid for Indian improvements, in and by the said report and award of said Love and Cook; that he the said Osborne was the agent of the United States Government for that purpose; that the said sum was all paid to him before the first of April, 1846, and after the first of April, 1844, and that he paid it over within the time in which he received it to individual Indians upon the Buffalo Creek reservation, pursuant to the said

award of said Love and Cook, and under the directions of the War Department.

The said Ira Cook was then called, sworn and examined as a witness on the part and behalf of the defendants, and by his testimony it was proved, that the said Thomas C. Love acted with him as one of the arbitrators under the said treaty of May 20th, 1842; that in October 1843, they, the said Love and Cook, went to the said Tonawanda reservation, accompanied with surveyors and assistants, for the purpose of exploring, examining and surveying the same, and the improvements thereon, and appraising the said improvements, and to perform their duties as such arbitrators in relation to that reservation and the improvements thereon; that before they reached the said Tonawanda reservation, they received a letter addressed to them, and purporting to be signed by the plaintiff and other Indians residing on that reservation, requesting them not to come; that they went, however, the letter notwithstanding, and requested the Indians there to meet them at the council-house on said reservation; that a very large portion of the Indians on that reservation assembled together accordingly, and the plaintiff with them; that the said Love and Cook explained to the plaintiff, and the other Indians so assembled, the aforesaid object and intent of their coming; that the plaintiff and the other Indians so assembled together utterly and absolutely refused to permit the proposed exploring, examination, survey or appraisal to be made, and requested the said Love and Cook with their surveyors and assistants to depart from the reservation, which they accordingly did; that they, the said Love and Cook, in pursuance of instructions from the War Department of the United States, in December, 1843, again repaired to the said Tonawanda reservation with surveyors and assistants for the same purpose as before, and notified the Indians there to meet them, and that a large majority of the adult Indians, both men and women, and the plaintiff with them, accordingly assembled together, and met them, the said Love and Cook, who then informed the Indians that they were instructed to go on and make the examination and appraisement of their improvements, and perform their duties as arbitrators in relation to the same, and to that reservation; that the plaintiff and the other Indians so assembled absolutely forbade the proposed exploration, examination, survey and appraisal, and claimed that they were not parties to the said treaty of May 20th, 1842, and would not be bound by it; that the said Love and Cook then declared to the Indians, that they should go on and make the proposed examination and appraisal, and gave notice to them that they, the said Love and Cook, would then proceed to ascertain and value the improvements of any individual Indian who would show or point out his or her improvement; that this declaration and notice produced very great excitement and indignation among the Indians, and the plaintiff and other Indians told them they had better leave the reservation, intimating their fears that unless they should depart, their personal safety might be endangered; and the plaintiff came forward and took said Love and Cook each by the arm, and forced a way through the

crowd, and other Indians joined him, and led them off the reservation, (though in a good-natured manner,) being accompanied by a large crowd of the Indians to the boundary of the reservation, where the parties separated, shaking hands, however, in a friendly manner; that no Indian pointed out to them, or claimed any particular improvement, and no improvement was pointed out to them, and that they, the said Love and Cook, could not have done anything towards making an appraisement of the individual Indian improvements separately each by itself, on their own personal knowledge.

While on the cross-examination of this witness the plaintiff offered to prove by him that the said Love and Cook might have made the appraisal of the individual Indian improvements on the said Tonawanda reservation, by taking the testimony of persons residing in the neighborhood of the reservation, without resorting to the proposed exploration, examination or survey. This testimony was objected to by the defendants' counsel, but the said circuit court overruled the objection, and decided that the proposed evidence was admissible, and thereupon the counsel for the defendants excepted to such ruling and decision.

The said Cook then testified on such cross-examination that it might be possible that the appraisement of the individual Indian improvements could have been made by taking testimony of persons residing in the neighborhood of the reservation, without going on to it, or making the proposed exploration, examination, or survey, but that he did not know that it could have been done; that he thought, however, some defective appraisement might in that way have been made in the course of four weeks.

It was then admitted by the plaintiff, before the said court and jury, that the said Thomas L. Ogden died in December, 1844.

The defendants here rested, and thereupon the plaintiff objected that the proof of title and right of possession to the close in question was defective in the following particulars:

1st. There is no proof that the Tonawanda Indians or chiefs or head-men ever signed either the deeds or treaties offered in evidence by defendants, or that the persons who signed them had any power or authority to grant away the Indian title to the Tonawanda reservation, or that such persons had any possession of or right to said reservation.

2d. There is no proof offered of any custom or usage or law by which the persons who executed the deeds or treaties offered in evidence by defendants had any power to grant away the lands described in them, and particularly the Tonawanda reservation.

3d. There is no proof that either of the said deeds or treaties were made under the authority and with the consent of the legislature of this State.

4th. The defendants have not shown that at the time of the execution of said deeds and treaties said Ogden and Fellows, or either of them, were the grantees of Massachusetts directly or by mesne conveyances.

5th. They have not shown that Thomas C. Love was ever appointed an appraiser or arbitrator by the Secretary of War; the letters and other

documents given in evidence signed by Th. H. Crawford are not competent to show the appointment of Mr. Love as such arbitrator.

6th. These letters and documents, even though competent, are not properly proved; the originals should be produced.

7th. There is no evidence that the arbitrators have awarded and determined the amount to be paid to the owners of the individual improvements on the Tonawanda reservation, agreeably to the 4th article of the deed of May 20th, 1842.

8th. The report of the arbitrators given in evidence is not competent testimony to show what occurred at the Tonawanda reservation, as an excuse for not making such award.

9th. The evidence of the witness, Ira Cook, does not show that it was impracticable to make an award.

10th. The Tonawanda Indians who objected to the appraisal by Love and Cook at the councils described by Cook had no authority or power of themselves to dispense with or excuse the determination and award required by said 4th article.

11th. There is no proof of the payment of the improvement money so called for the Tonawanda reservation to the President of the United States, pursuant to article 5th of said deed of May 20th, 1842, or of any payment of said money.

12th. There is no proof that the award and determination required by the 4th article of said deed of May 20, 1842, has been filed in the office of the Department of War, as required by the 5th article of said deed.

The said circuit court decided, and ruled generally without passing upon said objections separately, that the defendants had failed to establish any title or right of possession to the close in question, and thereupon the defendants, by their counsel, excepted to such ruling and decision of the said circuit court.

The defendants, by their counsel, then requested the said circuit court to charge the said jury, that the defendants had shown the title to the close in question to be in the defendant Fellows. But the said circuit court refused so to charge the jury, and the defendants, by their counsel, thereupon excepted to such refusal.

The defendants' counsel then requested the said circuit court to charge the said jury, that the action of the Indians on the Tonawanda reservation, and of the plaintiff himself, in interfering and preventing the arbitrators from performing the duties imposed on them, could not prejudice the rights of the grantee under the treaty of May 20, 1842, and that in consequence thereof, Fellows, the surviving grantee, was entitled to the possession of the close in question at the expiration of two years from the filing of the said award in the office of the War Department, notwithstanding the omission of the arbitrators to award and determine the amount to be paid to the plaintiff, or any other individual Indian, for improvements on the Tonawanda reservation, out of the said sum of $58,768 96, awarded for improvements on the two reservations, (the Buffalo Creek and Tonawanda.) But the said cir-

cuit court refused so to charge the said jury, and the defendants, by their counsel, thereupon excepted to such refusal.

The defendants, by their counsel, then requested the said circuit court to charge the said jury, that for the purpose of making an award for the distribution of the improvement fund among the individual Indians, the arbitrators should be deemed to be the agents of the Indians themselves, and that no failure of the arbitrators to perform that part of their duty could prejudice the rights of the grantees, Ogden and Fellows, unless such failure had been caused or procured by them. But the said circuit court refused so to charge the said jury, and thereupon the defendants, by their counsel, excepted to such refusal.

The defendants, by their counsel, then requested the said circuit court to charge the said jury, that if the defendants had shown no title to the close in question, in the defendant Fellows, still the plaintiff, an individual Indian, could not maintain the action of trespass for breaking and entering the premises. The said circuit court thereupon ruled that the plaintiff being in possession could maintain the action, and therefore refused to charge the jury in this case as requested, and thereupon the defendants, by their counsel, excepted to such ruling and refusal.

The jury thereupon rendered their verdict for the plaintiff upon all the said issues, and for eight hundred and twenty-five dollars damages; and inasmuch as the matters aforesaid do not appear by the record of said verdict, the said counsel for the defendants did then and there propose their aforesaid exceptions to the said several decisions, opinions, rulings, and refusals of the said circuit court before the delivery of the said verdict, and requested the said justice to put his seal to this bill of exceptions, containing the said several matters so given in evidence on the trial of the aforesaid issues, according to the form of the statute in such case made and provided, and thereupon the said justice, at the request of the said counsel for the defendants, hath put his seal to this bill of exceptions, pursuant to the aforesaid statute, on the 28th day of August, 1849.

S. E. SILL, [L. S.]

Schedule A.

An Act supplementary to the act entitled "An act to appoint agents or commissioners for vindicating the right and jurisdiction of this State against the claims of the commonwealth of the Massachusetts, pursuant to the Articles of Confederation and perpetual union of the United States."

Whereas, in and by the act entitled "An act to appoint agents or commissioners for vindicating the right and jurisdiction of this State against the claims of the commonwealth of the Massachusetts, pursuant to the Articles of Confederation and perpetual union of the United States," passed the 12th of November, 1784, James Duane, John Jay, Robert R. Livingston, Egbert Benson, and Walter Livingston, esquires,

were declared to be agents for this State in the controversy between this State and the commonwealth of the Massachusetts, as mentioned in the said act. And whereas the said John Jay and Walter Livingston have informed this legislature that they cannot attend the duties required of them by the said act, by reason of the offices they severally hold under the United States, and have requested to resign their appointments as agents in the controversy aforesaid, whereby it is become necessary that other persons be appointed in the place of the said John Jay and Walter Livingston: Therefore

Be it enacted by the people of the State of New York, represented in senate and assembly, and it is hereby enacted by the authority of the same, that John Haring, Melancton Smith, Robert Yates, and John Lansing, junior, esquires, be, and they are hereby appointed and declared to be agents, in the place of the said John Jay and Walter Livingston, for this State in the controversy aforesaid. And in order that the said controversy may be brought to a speedy issue:

Be it further enacted by the authority aforesaid, that the said James Duane, Robert R. Livingston, Egbert Benson, John Haring, Melancton Smith, Robert Yates, and John Lansing, junior, or such of them as shall attend the trial of the controversy aforesaid, at the federal court appointed to determine the same, have a credit on the treasury for a sum not exceeding four thousand pounds, to be paid them by the treasurer of this State on account.

And be it further enacted by the authority aforesaid, that it shall and may be lawful for the said James Duane, Robert R. Livingston, Egbert Benson, John Haring, Melancton Smith, Robert Yates, and John Lansing, junior, or any five or more of them, to settle the said controversy between this State and the commonwealth of the Massachusetts, otherwise than by the said federal court, as mentioned in the said act, in such manner as they shall judge most conducive to the interest of this State.

Passed council of revision, April 28, 1786.

Schedule B.

To all to whom these presents shall come:

The underwritten John Lowell, James Sullivan, Theophilus Parsons, and Rufus King, agents or commissioners appointed by the commonwealth of Massachusetts, of the one part, and the underwritten James Duane, Robert R. Livingston, Robert Yates, John Haring, Melancton Smith, and Egbert Benson, six of the agents or commissioners appointed by the State of New York, of the other part, send greeting:

Whereas the commonwealth of Massachusetts did heretofore present a petition to the United States in Congress assembled, thereby, among other things, stating, that all that territory which in the said petition is described as all that part of New England, in America, which lieth and extendeth between a great river called Merrimack, and a certain other river there called Charles river, being the bottom of a

bay there called Massachusetts bay; and also, all those lands lying within three English miles to the southward of the southermost part of the said bay, and extending thence northward, in latitude to northward of every part of the said river Merrimack, and in breadth of latitude aforesaid, extending throughout all the main land, in longitude westwardly to the Southern ocean, was the just and proper right of the said commonwealth; and farther stating, that the State of New York had set up a claim to some part of the land before mentioned; the said commonwealth did, therefore, by the said petition, solemnly request of the United States in Congress, that commissioners might be appointed for inquiring into and determining upon the claim aforesaid of the legislature of the said commonwealth, and that such other proceedings respecting the premises might be had, as are by the federal government of the United States in such case made and provided, as by the said petition filed among the archives of the United States, reference being thereunto had, may more fully appear: And whereas, the State of New York doth, in opposition to the said claim of the commonwealth of Massachusetts, claim as the just and proper right of the said State, as well in respect of property as jurisdiction, all those lands and territories bounded on the north by the parallel of latitude passing through the said point, place, or boundary aforesaid, of three miles to the northward of every part of the said river Merrimack, and bounded on the south by the parallel of latitude passing through the said point or place, situate three miles south of the southermost part of said bay called Massachusetts bay, bounded on the west by the limits between the United States and the King of Great Britain, and the line of cession from the State of New York to the United States, and bounded on the east by the line agreed on and established between the late colony of the Massachusetts bay, and the late colony of New York, in the year one thousand seven hundred and seventy-three, and from the northern termination of the said line, then bounded on the east by the west bank of the Connecticut river: And whereas, the State of New York, having been duly notified, did appear by their lawful agents to vindicate such their said right against the said claim of the said commonwealth, and proceedings were thereupon had in Congress, pursuant to the Articles of Confederation, in order to the appointment of commissioners or judges to constitute a court for hearing and determining the said matters in question: And whereas, the said John Lowell, James Sullivan, Theophilus Parsons and Rufus King, were afterwards, by a certain commission, under the seal of the said commonwealth, and bearing date the twenty-sixth day of April, in the ninth year of the independence of the United States, and made in pursuance of an act of the legislature of the said commonwealth, passed the fourteenth day of March, in the eighth year of the independence of the United States, and of a resolution of the said legislature, passed the eighteenth day of the said month of March, commissioned to be agents to manage, conduct, and prosecute the claims of the said commonwealth to the lands described in the said petition: And whereas, afterwards, and pending such proceedings in

Congress, the legislature of the commonwealth of Massachusetts did, by an act entitled an act empowering the agents appointed by their government to defend the territory on the west side of Hudson's river against the claims of the State of New York, to settle the controversy relative thereto otherwise than by a federal court, if they shall judge it expedient, enact that the major part of the said agents or commissioners should be fully authorized and empowered to agree with the agents or commissioners of the State of New York, and settle the controversy respecting the territory aforesaid, by a federal court as appointed by virtue of the Confederation, or otherwise, in such way and manner as they should judge would comport with justice and the interest of the said commonwealth; and the legislature of the State of New York did, by an act entitled "An act supplementary to the act entitled an act to appoint agents or commissioners for vindicating the right and jurisdiction of this State against the claims of the commonwealth of Massachusetts, pursuant to the Articles of Confederation and perpetual union of the United States," among other things enact, that it should be lawful for the said James Duane, Robert R. Livingston, Egbert Benson, John Haring, Melancton Smith, and Robert Yates, and also John Lansing, jun., or any five or more of them, to settle the said controversy between the said State of New York and the said commonwealth of Massachusetts, otherwise than by the said federal court, in such manner as they should judge most conducive to the interest of the said State, as by the said commission and the said several acts, relation being thereunto had, may appear.

Now, therefore, know ye: That the underwritten commissioners on the part of the commonwealth of Massachusetts and the State of New York, respectively, having by mutual consent assembled at the city of Hartford, in the State of Connecticut, on the thirtieth day of November last, in order to the due execution of their respective trusts, and having duly exchanged and considered their respective powers, and declared the same legal and sufficient, after several conferences, and to the end that all interfering claims and controversies between the said commonwealth of Massachusetts and the said State of New York, as well in respect of jurisdiction as property, may be finally settled and extinguished, and peace and harmony forever established between them on the most solid foundation—have agreed, and by these presents do mutually, for and in behalf of the said commonwealth of Massachusetts and the said State of New York, by whom respectively, they, the said commissioners, have been so appointed and authorized as aforesaid, agree to the mutual cessions, grants, releases, and other provisions following, that is to say:

First. The commonwealth of Massachusetts doth hereby cede, grant, release, and confirm to the State of New York, forever, all the claim, right, and title which the commonwealth of Massachusetts hath to the government, sovereignty, and jurisdiction of the lands and territories so claimed by the State of New York, as herein before stated and particularly specified.

Secondly. The State of New York doth hereby cede, grant, release and confirm to the commonwealth of Massachusetts, and to the use of the commonwealth, their grantees, and the heirs and assigns of such grantees forever, the right of pre-emption of the soil from the native Indians, and all other the estate, right, title and property, (the right and title of government, sovereignty, and jurisdiction excepted,) which the State of New York hath, of, in, or to two hundred and thirty thousand and four hundred acres, to be located by the commonwealth of Massachusetts, and to be situate to the northward of, and adjoining to, the lands granted respectively to Daniel Cox and Robert Lettice Hooper, and their respective associates, and between the rivers Oswego and Chenango; and also, of, in, or to all the lands and territories within the following limits and bounds, that is to say: Beginning in the north boundary line of the State of Pennsylvania, in the parallel of forty-two degrees of north latitude, at a point distant eighty-two miles west from the northeast corner of the State of Pennsylvania, on the Delaware river, as the said boundary line hath been run and marked by the commissioners appointed by the State of Pennsylvania and New York respectively, and from the said point or place of beginning, running on a due meridian north to the boundary line between the United States of America and the King of Great Britain; thence westerly and southerly along the said boundary line, to a meridian which will pass one mile due east from the northern termination of the Streight, or waters between Lake Ontario and Lake Erie; thence south along the said meridian, to the south shore of Lake Ontario; thence on the eastern side of the said Streight, by a line always one mile distant from the parallel to the said Streight to Lake Erie; thence due west to the boundary line between the United States and the King of Great Britain; thence along the said boundary line, until it meets with the line of cession from the State of New York to the United States; thence along the said line of cession to the northwest corner of the State of Pennsylvania; and thence east along the northern boundary line of the State of Pennsylvania to the said place of beginning; and which said lands and territories so ceded, granted, released, and confirmed, are parcel of the land and territories described in said petition.

Thirdly. The commonwealth of Massachusetts doth hereby cede, grant, release and confirm to the State of New York, and to the use of the State of New York, their grantees, and the heirs and assigns of such grantees forever, the right of pre-emption to the soil from the native Indians, and all other the estate, right, title and property, which the commonwealth of Massachusetts hath of, in, or to the residue of the lands or territories so claimed by the State of New York, as herein before stated and particularly specified.

Fourthly. That the lands so ceded, granted, released and confirmed to the commonwealth of Massachusetts, or such part thereof as shall from time to time be and remain the property of the commonwealth of Massachusetts, shall, during the time that the same shall so be and remain such property, be free and exempt from all taxes whatsoever,

and that no general or State tax shall be charged on, or collected from the lands hereafter to be granted by the commonwealth of Massachusetts or on the occupants or proprietors of such lands, until fifteen years after such confirmation, as is hereinafter mentioned, of such grants shall have expired; but that the lands so to be granted, and the occupants thereof, shall, during the said period, be subject to town or county charges or taxes, only: Provided that this exemption from general or State taxes shall not be construed to extend to such duties, excises or imposts, to which the other inhabitants of the State of New York shall be subject and liable.

Fifthly. That no rents or services shall be reserved in any grants to be made of the said lands by the commonwealth of Massachusetts.

Sixthly. That the inhabitants of the said lands and territories, being citizens of any of the United States, holding by grants from the commonwealth of Massachusetts, shall be entitled to equal rights with the other citizens of the State of New York; and further, that the citizens of the commonwealth of Massachusetts shall from time to time, and at all times hereafter, have and enjoy the same and equal rights, respecting the navigation and fishery, on and in Lake Ontario and Lake Erie, and the waters communicating from the one to the other of the said lakes, and respecting the roads and portages between the said lakes, as shall from time to time be had and enjoyed by the citizens of the State of New York; and the citizens of the commonwealth of Massachusetts shall not be subject to any other regulations or greater tolls or duties to be made or imposed from time to time by the State of New York, respecting the premises, than the citizens of the State of New York shall be subject to.

Seventhly. That no adverse possession of the said lands for any length of time shall be adjudged a disseizen of the commonwealth of Massachusetts.

Eighthly. That the State of New York, so long as any part of the said lands shall be and remain the property of the commonwealth of Massachusetts, shall not cede, relinquish, or in any manner divest themselves of the government and jurisdiction of the said lands or any part thereof, without the consent of the commonwealth of Massachusetts.

Ninthly. That the commonwealth of Massachusetts may from time to time, by persons to be by them authorized for the purpose, hold treaties and conferences with the native Indians, relative to the property or right of soil of the said lands and territories hereby ceded, granted, released and confirmed to the commonwealth of Massachusetts, and with such armed force as they shall deem necessary for the more effectual holding such treaty or conference; and the commonwealth of Massachusetts, within six months after such treaties shall respectively be made, shall cause copies thereof to be deposited in the office of the secretary of the State of New York.

Tenthly. The commonwealth of Massachusetts may grant the right of pre-emption of the whole or of any part of said lands and terri-

tories to any person or persons who by virtue of such grant shall have good right to extinguish by purchase the claims of the native Indians: Provided, however, that no purchase from the native Indians by any such grantee or grantees shall be valid, unless the same shall be made in the presence of, and approved by a superintendent to be appointed for such purpose by the commonwealth of Massachusetts, and having no interest in such purchase; and unless such purchase shall be confirmed by the commonwealth of Massachusetts.

Eleventhly. That the grantees of said lands and territories under the commonwealth of Massachusetts shall, within six months after the confirmation of their respective grants, cause such grants or the confirmation thereof, or copies of such grants or confirmations, certified, or exemplified under the seal of the commonwealth of Massachusetts, to be deposited in the said office of the Secretary of the State of New York, to the end that the same may be recorded there; and after the same shall have been so recorded, the grantees shall be entitled to receive again from the said secretary their respective grants or confirmations, or the copies thereof, whichsoever may have been so deposited, without any charges or fees of office whatsoever, and every grant or confirmation which shall not, or of which copies shall not, be so deposited, shall be adjudged void.

In testimony whereof, the said John Lowell, James Sullivan, Theophilus Parsons and Rufus King, for and in the name and behalf of the said commonwealth of Massachusetts; and the said James Duane, Robert R. Livingston, Robert Yates, John Haring, Melancton Smith, and Egbert Benson, for and in the name and on behalf of the said State of New York, have to these presents, and a duplicate thereof, both indented, interchangeably set their hands, and affixed their seals; done at the city of Hartford aforesaid, this sixteenth day of December, in the year of our Lord one thousand seven hundred and eighty-six, and the eleventh year of the independence of the United States of America.

JOHN LOWELL, [L. S.]
JAMES SULLIVAN, [L. S.]
THEOPHILUS PARSONS, [L. S.]
RUFUS KING, [L. S.]
JAMES DUANE, [L. S.]
ROBERT R. LIVINGSTON, [L. S.]
ROBERT YATES, [L. S.]
JOHN HARING, [L. S.]
MELANCTON SMITH, [L. S.]
EGBERT BENSON. [L. S.]

Witnesses present at the sealing and delivery: George Wyllys, Thomas Seymour, Jesse Root, Jeremiah Wadsworth, D. Humphreys, William Imlay, Joseph Webb, Simeon de Witt, Lewis du Boys, Nathaniel Bethune.

Be it remembered, that on the thirtieth day of January, in the year of our Lord one thousand seven hundred and eighty-seven, personally appeared before me, Richard Morris, chief justice of the State of New

York, Jeremiah Wadsworth and Lewis Duboys, esquires, two of the subscribing witnesses to the within instrument, who being by me duly sworn did severally depose and say, that they were present and did see the within-named James Duane, Robert R. Livingston, Robert Yates, John Haring, Melancton Smith, Egbert Benson, John Lowell, James Sullivan, Theophilus Parsons and Rufus King, severally sign, seal and deliver the within instrument, as their and each of their free and voluntary act and deed, to and for the uses and purposes therein mentioned; and that George Wyllys, Thomas Seymour, Jesse Root, D. Humphreys, William Imlay, Simeon de Witt, and Nathaniel Bethune, the other subscribing witnesses, were also present, and did, together with the deponents, sign and subscribe their names as witnesses to the execution thereof; and I, having inspected the said instrument and finding no interlineations or material erasures therein, except those noted in the body thereof, do allow the same to be recorded.

R'D MORRIS.

Schedule C.

[SENATE JOURNAL, *January* 13, 1787.]

"A message from his excellency; the governor, was received, requiring the attendance of the senate in the senate chamber.

"The president accordingly left the chair, and with the senate attended his excellency, and having re-assumed the chair informed the senate that his excellency, the governor, had made a speech to the legislature and presented him with a copy thereof, which being read is in the words following, viz.:

"GENTLEMEN OF THE SENATE AND ASSEMBLY:

"As you are now assembled in pursuance of the law for fixing the stated meetings of the legislature, the annual appointments to be made by the senate and assembly will, of course, be your first business.

"GENTLEMEN:

"I have the pleasure to inform you that the law passed at the last session of the legislature, vesting commissioners with discretionary power to determine the controversy between this State and the commonwealth of Massachusetts, otherwise than by Federal court, hath been carried into full effect: all interfering claims, both with respect to territory and jurisdiction, being finally adjusted. The mutual agreement and act of cession, executed with the usual solemnities by the commissioners of both States, is now laid before you, and I have the fullest confidence that the conduct of your commissioners, in a mission equally difficult and important, will meet with your entire approbation, and that adequate provision will be made for the services and expenses which have arisen in laborious preparations for the trial, as well as in the final extinguishment of the contest."

[ASSEMBLY JOURNAL, *January* 13, 1787.]

"A message from his excellency, the governor, was delivered by his private secretary, that his excellency requires the immediate attendance of this house in the senate chamber.

"Mr. Speaker left the chair, and with the house attended accordingly, and having returned and re-assumed the chair, he reported to the house that his excellency had been pleased to make a speech to the legislature, and to deliver a copy thereof. The same being read, is in the following words, viz.:

[Speech same as above.]

[SENATE JOURNAL, *January* 17, 1787.]

"The answer of the senate to his excellency's speech, in the words following, viz.:

"The answer of the Senate of the State of New York to the speech of his Excellency George Clinton, esquire, Governor of the said State, General and Commander-in-chief of all the Militia, and Admiral of the Navy of the same.

"SIR: It gives us the highest satisfaction to find, that while by the Divine goodness we enjoy the blessings of peace and good order, the controversy between this State and the Commonwealth of Massachusetts, with respect to territory and jurisdiction, is finally determined. Suitable provisions will be made for our commissioners, whose conduct in transacting this business receives our fullest approbation."

[ASSEMBLY JOURNAL, *January* 20, 1787.]

"The engrossed address to his excellency, the governor, was read, and is in the words following, to wit:

"To his Excellency, George Clinton, esquire, Governor of the State of New York, General and Commander-in-chief of all the Militia, and Admiral of the Navy of the same.

"The respectful address of the assembly, in answer to his excellency's speech at the opening of the session.

"We learn with peculiar pleasure that the measures adopted by the legislature at the last session for settling, otherwise than by a Federal court, the territorial dispute between this State and the commonwealth of Massachusetts, have been carried into full effect; and that while, through the Divine goodness, we enjoy the blessings of internal peace and order, the sources of external discord and animosity, resulting from a controverted boundary, are happily extinguished, the public tranquillity in a point of such magnitude secured, and the heavy expense of a judicial investigation avoided. The conduct of our commissioners in this delicate and important trust meets with our entire approbation; and we shall fully concur in making adequate provision for the services rendered and expenses incurred, either in preparing for trial or towards the adjustment of the controversy."

[ASSEMBLY JOURNAL, *January* 24, 1787.]

"*Resolved*, (if the honorable the senate concur herein,) That a committee of the honorable the senate, and a committee of this house, be appointed to see the mutual agreement and act of cession, executed by the commissioners on the part of this State, and on the part of the commonwealth of Massachusetts, for settling the controversy lately subsisting between this State and the said commonwealth, duly proved, recorded and deposited in the office of the secretary of this State, to the end that the said agreement and act of cession so proved, recorded and deposited, may remain in perpetual testimony of the matters therein contained, and, in case of such concurrence, that Mr. Bayard, Mr. E. Clark and Mr. Cantine, be a committee on the part of this house for that purpose.

"*Ordered*, That Mr. J. Livingston deliver a copy of the last preceding resolution to the honorable the senate."

[SENATE JOURNAL, *January* 25, 1787.]

"A message from the honorable the assembly, by Mr. J. Livingston, was received with the following resolution for concurrence, viz.:

[Resolution same as above.]

"*Resolved*, That the senate do concur with the honorable the assembly in their said resolution, and that Mr. Haring and Mr. L'Hommedieu be a committee on the part of the senate, for the purposes therein mentioned.

"*Ordered*, That Mr. Swartwout deliver a copy of the preceding concurrent resolutions to the honorable the assembly."

[SENATE JOURNAL, *February* 17, 1787.]

"*Resolved*, (If the honorable the assembly concur herein,) That in order to prevent any uneasiness which may arise in the minds of the Six Nations, from misrepresentations of the terms of the mutual agreement and act of cession, lately executed between the commissioners on the part of this State, and on the part of the commonwealth of Massachusetts, relative to the lands within this State, now held and occupied by the said Indians, it is necessary that the said agreement and act of cession be communicated and explained to them as soon as may be.

"*Resolved*, That his excellency, the governor, make such communication and explanation in person, if necessary, or by such other person or persons as he shall appoint for that purpose, and that he transmit a copy of these resolutions to the executive of the commonwealth of Massachusetts, and express as the wish of this legislature, that a similar communication should also be made on the part of the said commonwealth, at such time and place as shall be agreed on between their excellencies, the governor of this State and the governor of the commonwealth of Massachusetts.

"*Resolved*, That this State will provide for the defraying the expense which may accrue on the part of this State in making such communication.

"*Ordered*, That Mr. Ward deliver copies of the preceding resolutions to the honorable the assembly."

[ASSEMBLY JOURNAL, *February* 19, 1787.]

"A copy of three resolutions of the honorable the senate, delivered by Mr. Ward, was read, and is in the words following, viz.:

[Resolutions same as the last above.]

"*Resolved*, That this house do concur with the honorable the senate in the said three resolutions."

Schedule D.

"ART. 3. The land of the Seneca Nation is bounded as follows: Beginning on Lake Ontario, at the northwest corner of the land they sold to Oliver Phelps, the line runs westerly along the lake, as far as Oyongwongyeh creek, at Johnston's landing-place, about four miles eastward from the Fort of Niagara; then southerly, up that creek, to its main fork; then straight to the main fork of Stedman's creek, which empties into the river Niagara, above Fort Schlosser; and then onward, from that fork, continuing the same straight course, to that river; (this line, from the mouth of Oyongwongyeh creek to the river Niagara, above Fort Schlosser, being the eastern boundary of a strip of land, extending from the same line to Niagara river, which the Seneca Nation ceded to the king of Great Britain, at a treaty held about thirty years ago, with Sir William Johnston; then the line runs along the river Niagara to Lake Erie; then along Lake Erie to the northeast corner of a triangular piece of land, which the United States conveyed to the State of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due south to the northern boundary of that State; then due east to the southwest corner of the land sold by the Seneca Nation to Oliver Phelps; and then north and northerly, along Phelps's line, to the place of beginning on Lake Ontario.) Now, the United States acknowledge all the land within the aforementioned boundaries to be the property of the Seneca Nation; and the United States will never claim the same, nor disturb the Seneca Nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them, in the free use and enjoyment thereof: but it shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase."

Schedule E.—Special Provisions for the Senecas.

"ARTICLE 10. It is agreed with the Senecas that they shall have for themselves and their friends, the Cayugas and Onondagas, residing among them, the easterly part of the tract set apart for the New York Indians, and to extend so far west, as to include one-half section (three hundred and twenty acres) of land for each soul of the Senecas, Cayugas, and Onondagas, residing among them; and if, on removing west, they find there is not sufficient timber on this tract for their use, then

the President shall add thereto timber land sufficient for their accommodation, and they agree to remove; to remove from the State of New York to their new homes within five years, and to continue to reside there. And whereas, at the making of this treaty, Thomas L. Ogden and Joseph Fellows, the assignees of the State of Massachusetts, have purchased of the Seneca Nation of Indians, in the presence and with the approbation of the United States commissioner, appointed by the United States to hold said treaty or convention, all the right, title, interest, and claim of the said Seneca Nation, to certain lands, by a deed of conveyance, a duplicate of which is hereunto annexed; and whereas the consideration money mentioned in said deed, amounting to two hundred and two thousand dollars, belongs to the Seneca Nation, and the said nation agrees that the said sum of money shall be paid to the United States, and the United States agree to receive the same, to be disposed of as follows: the sum of one hundred thousand dollars is to be invested by the President of the United States in safe stocks, for their use, the income of which is to be paid to them at their new homes annually, and the balance, being the sum of one hundred and two thousand dollars, is to be paid to the owners of the improvements on the lands so deeded, according to an appraisement of said improvements and a distribution and award of said sum of money among the owners of said improvements, to be made by appraisers, hereafter to be appointed by the Seneca Nation, in the presence of a United States commissioner, hereafter to be appointed, to be paid by the United States to the individuals who are entitled to the same, according to said appraisal and award, on their severally relinquishing their respective possessions to the said Ogden and Fellows.

"At a treaty held under the authority of the United States of America, at Buffalo creek, in the county of Erie and State of New York, between the chiefs and head-men of the Seneca nation of Indians, duly assembled in council, and representing and acting for the said nation, on the one part, and Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, in the county of Ontario, on the other part, concerning the purchase of the right and claim of the said Indians in and to the lands within the State of New York remaining in their occupation: Ransom H. Gillet, esquire, a commissioner appointed by the President of the United States to attend and hold the said treaty, and also Josiah Trowbridge, esquire, the superintendent on behalf of the commonwealth of Massachusetts, being severally present at the said treaty, the said chiefs and head-men, on behalf of the Seneca Nation, did agree to sell and release to the said Thomas Ludlow Ogden and Joseph Fellows, and they, the said Thomas Ludlow Ogden and Joseph Fellows, did agree to purchase all the right, title, and claim of the said Seneca Nation, of, in and to the several tracts, pieces, or parcels of land mentioned and described in the instrument of writing next hereinafter set forth, and at the price or sum therein specified, as the consideration or purchase-money for such sale and release; which instrument being read and explained to the said parties and mutually

agreed to, was signed and sealed by the said contracting parties, and is in the words following:

This indenture, made this fifteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, between the chiefs and head-men of the Seneca nation of Indians, duly assembled in council, and acting for and on behalf of the said Seneca nation, of the first part, and Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, in the county of Ontario, of the second part, witnesseth: That the said chiefs and head-men of the Seneca nation of Indians, in consideration of the sum of two hundred and two thousand dollars, to them in hand paid by the said Thomas Ludlow Ogden and Joseph Fellows, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, and to their heirs and assigns, all that certain tract or parcel of land, situate, lying and being in the county of Erie and State of New York, commonly called and known by the name of Buffalo Creek reservation, containing, by estimation, forty-nine thousand nine hundred and twenty acres, be the contents thereof more or less. Also, all that certain other tract or parcel of land, situate, lying and being in the counties of Erie, Chautauque and Cattaraugus, in said State, commonly called and known by the name of Cattaraugus reservation, containing by estimation twenty-one thousand six hundred and eighty acres, be the contents thereof more or less. Also, all that certain other tract or parcel of land, situate, lying and being in the said county of Cattaraugus, in said State, commonly called and known by the name of the Allegany reservation, containing by estimation thirty thousand four hundred and sixty-nine acres, be the contents more or less. And also, all that certain other tract or parcel of land, situate, lying and being, partly, in said county of Erie, and partly in the county of Genesee, in said State, commonly called and known by the name of the Tonawanda reservation, and containing by estimation twelve thousand eight hundred acres, be the same more or less. As the said several tracts of land have been heretofore reserved and are held and occupied by the said Seneca nation of Indians, or by individuals thereof, together with all and singular the rights, privileges, hereditaments and appurtenances to each and every of the said tracts or parcels of land belonging or appertaining; and all the estate, right, title, interest, claim and demand of the said party of the first part, and of the said Seneca nation of Indians, of, in and to the same, and to each and every part and parcel thereof: to have and to hold all and singular the above described and released premises unto the said Thomas Ludlow Ogden and Joseph Fellows, their heirs and assigns, to their proper use and behoof forever, as joint tenants, and not as tenants in common.

In witness whereof, the parties to these presents have hereunto, and to three other instruments of the same tenor and date, one to remain with the State of Massachusetts, one to remain with the Seneca nation

of Indians, and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals the day and year first above written.

Little Johnson, his x mark [l. s.]
Daniel Two Guns, [l. s.]
Captain Pollard, his x mark [l. s.]
James Stevenson, his x mark [l. s.]
Captain Strong, his x mark [l. s.]
Captain Snow, his x mark [l. s.]
Blue Eyes, his x mark [l. s.]
Levi Halftown, his x mark [l. s.]
Billy Shanks, his x mark [l. s.]
White Seneca, his x mark [l. s.]
George Bennet, his x mark [l. s.]
John Pierce, his x mark [l. s.]
John Gordon, his x mark [l. s.]
Jim Jonas, his x mark [l. s.]
William Johnson, his x mark [l. s.]
Reuben Pierce, his x mark [l. s.]
Morris Halftown, his x mark [l. s.]
Jacob Jimeson, his x mark [l. s.]
Samuel Gordon, [l. s.]
Thompson S. Harris, [l. s.]
George Jemison, his x mark [l. s.]
Nathaniel T. Strong, [l. s.]
Tall Peter, his x mark [l. s.]
Tommy Jimmy, his x mark [l. s.]
John Tall Chief, his x mark [l. s.]
George Fox, [l. s.]
Jabez Stevenson, [l. s.]
William Jones, his x mark [l. s.]
George White, his x mark [l. s.]

By his agent, White Seneca.

John Snow, his x mark [l. s.]
Walter Thompson, his x mark [l. s.]

By his agent, Daniel Two Guns.

Long John, his x mark [l. s.]
John Bark, his x mark [l. s.]
George Lindsey, [l. s.]
Jacob Bennet, his x mark [l. s.]
John Bennet, his x mark [l. s.]
Seneca White, his x mark [l. s.]
Maris B. Pierce, [l. s.]
David White, [l. s.]
James Shongo, his x mark [l. s.]
William Cass, his x mark [l. s.]
Samuel Wilson, his x mark [l. s.]
John Seneca, his x mark [l. s.]

Signed, sealed, and delivered in presence of—
James Striker,
Nathaniel T. Strong, } *Interpreters.*
Spencer H. Cone, }
H. B. Potter,
Charles H. Allen.

At the before mentioned treaty, held in my presence, as superintendent on the part of the commonwealth of Massachusetts, and this day concluded, the foregoing instrument of writing was agreed to by the contracting parties therein named, and was in my presence executed by them, and being approved by me, I do hereby certify and declare such my approbation thereof.

Witness my hand and seal, at Buffalo creek, this 15th day of January, in the year 1838.

JOSIAH TROWBRIDGE. [L. S.]

I have attended a treaty of the Seneca nation of Indians, held at Buffalo creek, in the county of Erie, in the State of New York, on the fifteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, when the within instrument was duly executed in my presence by the chiefs of the Seneca Nation, being fairly and properly understood by them. I do therefore certify and approve the same.

R. H. GILLET,
Commissioner.

Schedule F.

COMMONWEALTH OF MASSACHUSETTS.

On the petition of Robert Troup, Thomas L. Ogden, and B. W. Rogers, proprietors of lands in the State of New York:

Whereas, in the articles of agreement made on the sixteenth day of December, in the year one thousand seven hundred and eighty-six, between the commonwealth of Massachusetts and the State of New York, concerning certain lands within the territorial jurisdiction of the State of New York, and whereof the State of Massachusetts had the pre-emptive right, and by which articles the rights of these States were respectively ascertained and determined, it was provided among other things, as follows:

Tenthly. The commonwealth of Massachusetts may grant the right of pre-emption of the whole or of any of the said lands and territories to any person or persons who by virtue of such grant shall have good right to extinguish by purchase the claims of the native Indians: Provided, however, that no purchase from the native Indians by any such grantee or grantees shall be valid unless the same shall be made in the presence of, and approved by, a superintendent to be appointed for such purpose by the commonwealth of Massachusetts, and having no

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interest in such purchase, and unless such purchase shall be confirmed by the commonwealth of Massachusetts.

Eleventhly. That the grantees of the said lands and territories, under the commonwealth of Massachusetts, shall, within six months after the confirmation of their respective grants, cause such grants, or the confirmation thereof, or copies of such grants or confirmations, certified or exemplified under the seal of the commonwealth of Massachusetts, to be deposited in the office of the secretary of the State of New York, to the end that the same may be recorded there; and after the same shall have been so recorded, the grantees shall be entitled to receive again from the said secretary their respective grants or confirmations, or the copies thereof, whichsoever may have been so deposited, without any charges or fees of office whatsoever, and every grant or confirmation which shall not be so deposited shall be adjudged void.

And whereas, for the reasons above set forth, and in conformity to the said agreement between this commonwealth and the State of New York, all deeds and grants made pursuant thereto ought to be confirmed:

And whereas, Robert Troup, Thomas Ludlow Ogden, and Benjamin W. Rogers, have represented that they are the purchasers of certain tracts of land which are included in the lands and territories aforesaid, and are entitled under said articles of agreement to have their purchase confirmed on the part of this commonwealth: Wherefore

Resolved, That his excellency, the governor, by and with the consent and advice of the council, be, and he hereby is, authorized and empowered to confirm the aforesaid purchase of said petitioners, provided the same shall appear to his excellency to have been made in conformity to the said articles of agreement; and also to confirm in like manner, for and in behalf of this commonwealth, all other purchases which have been made, or which may hereafter be made, in conformity to said articles of agreement; and to certify such confirmations, in such form and manner, under the seal of this commonwealth, as his excellency may think proper to carry the aforesaid articles of agreement into full effect.

In senate, January 19, 1828. Read and passed—sent down for concurrence. JOHN MILLS, *President.*

House of representatives, January 25, 1828. Read and passed in concurrence. WILLIAM C. JARVIS, *Speaker.*

January 26, 1828—Approved. LEVI LINCOLN.

Schedule G.

COMMONWEALTH OF MASSACHUSETTS.

To whom it may concern:

[L. S. EDWARD EVERETT.] Be it known, that whereas, by a resolve of this commonwealth, passed on the twenty-sixth day of January, one thousand eight hundred and twenty-eight, the governor was authorized and empowered, by and with the advice

and consent of council, to confirm, for and in behalf of the commonwealth, a certain purchase made by Robert Troup, Thomas Ludlow Ogden, and Benjamin W. Rogers, esquires, of certain tracts of land situate in the State of New York; and also to confirm, as in and by said resolve was provided, all purchases which had then been made, or which might thereafter be made, of the claims of the native Indians by the grantees of the State of Massachusetts, of its right of pre-emption of the whole or any part of the territories mentioned and intended in the articles of agreement, made on the sixteenth day of December, in the year one thousand seven hundred and eighty-six, between the commonwealth of Massachusetts and the State of New York; such purchases being made in the presence of a superintendent appointed by the said commonwealth, and by him duly approved; and such confirmations to be certified by the governor, in such form and manner as his excellency might think proper, to carry the aforesaid articles of agreement into full effect:

And whereas it has been made to appear to me that by and in virtue of a certain indenture made the fifteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, between the chiefs and head-men of the Seneca nation of Indians, duly assembled in council, and acting for and in behalf of said Seneca Nation, of the first part, and Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows of Geneva, in the county of Ontario, of the second part, that the said Ogden and Fellows, grantees claiming under this commonwealth, according to the aforesaid articles of agreement, are purchasers from the said Seneca Nation, for the consideration of two hundred and two thousand dollars, of a tract of land situate in the county of Erie, in the State of New York, commonly known and called by the name of the Buffalo Creek reservation, containing, by estimation, forty-nine thousand nine hundred and twenty acres. Also all that other tract of land in the counties of Erie, Chautauque, and Cattaraugus, in said State, commonly known and called by the name of the Cattaraugus reservation, containing, by estimation, twenty-one thousand six hundred and eighty acres. Also a tract in the county of Cattaraugus, known by the name of the Allegany reservation, containing, by estimation, thirty thousand four hundred and sixty-nine acres. Also a tract partly in Erie county, and partly in Genesee county, known by the name of the Tonnawanda reservation, estimated to contain twelve thousand and eight hundred acres. All which appears by one of the four parts of said indenture, remaining with the State of Massachusetts:

And whereas it also appears to me that Josiah Trowbridge, esquire, by me heretofore duly appointed to attend any such treaty for such purchases, as superintendent for this commonwealth, did attend the treaty whereat the said indenture of purchase was made, and has duly certified his approbation thereof:

Now, therefore, I, Edward Everett, Governor of the commonwealth of Massachusetts, do, by and with the advice and consent of the coun-

cil, ratify and confirm, in behalf of this commonwealth, the said purchase, made by the said Thomas Ludlow Ogden and the said Joseph Fellows; and the said indenture of purchase, executed on the said fifteenth day of January, and every clause and article of said indenture.

In witness whereof I have caused the seal of the commonwealth to be hereunto affixed, the twelfth day of March, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States of America the sixty-second.

By his excellency the Governor, with the advice and consent of Council.

JOHN P. BIGELOW *Sec'y of the Commonwealth.*

[Endorsed:] STATE OF NEW YORK, *Secretary's Office.*

Recorded in book of deeds, No. 42, page 277, &c., the 11th day of September, 1838, at nine o'clock a. m.

ARC'D CAMPBELL, *Dep. Secretary.*

Schedule H.

"Articles of a treaty made and concluded at Buffalo creek, in the State of New York, onthe twentieth day of May, in the year one thousand eight hundred and forty-two, between the United States of America, acting herein, by Ambrose Spencer, their commissioner, thereto duly authorized, on the one part, and the chiefs, headmen and warriors of the Seneca nation of Indians, duly assembled in council, on the other part.

"Whereas a treaty was heretofore concluded and made between the said United States, and the chiefs, head-men and warriors of the several tribes of New York Indians, dated the fifteenth day of January, in the year one thousand eight hundred and thirty-eight, which treaty, having been afterwards amended, was proclaimed by the President of the United States, on the fourth of April, one thousand eight hundred and forty, to have been duly ratified:

"And whereas, on the day of making this treaty, and bearing even date herewith, a certain indenture was made, executed and concluded by and between the said Seneca nation of Indians and Thomas L. Ogden and Joseph Fellows, assignees under the State of Massachusetts, in the presence, and with the approbation of a commissioner appointed by the United States, and in the presence and with the approbation of Samuel Hoare, a superintendent on the part of the commonwealth of Massachusetts, which indenture is in the words and figures following, to wit:

[This treaty here sets forth the indenture, saving and excepting the signatures and certificates thereto.]

"Therefore, taking into consideration the premises, it is agreed and stipulated by and between the United States of America and the Seneca nation of Indians, as follows, to wit:

"First. The United States of America consent to the several articles and stipulations contained in the last recited indenture between the said nation and the said Thomas Ludlow Ogden and Joseph Fellows, above set forth.

"Second. The United States further consent and agree, that any number of the said nation who shall remove from the State of New York, under the provisions of the above mentioned treaty, proclaimed as aforesaid, on the fourth day of April, one thousand eight hundred and forty, shall be entitled in proportion to their relative numbers to all the benefits of the said treaty.

"Third. The United States of America further consent and agree, that the tenth article of said treaty, proclaimed aforesaid on the fourth day of April, one thousand eight hundred and forty, be deemed and considered as modified, in conformity with the provisions of the indenture herein above set forth, so far as that the United States will receive and pay the sum stipulated to be paid as the consideration money of the improvements therein specified, and will receive, hold, and apply the sum to be paid, or the securities to be given for the lands therein mentioned, as provided for in such indenture.

"In testimony whereof, the undersigned Ambrose Spencer, commissioner on the part of the United States of America, and the undersigned chiefs and head-men of the Seneca nation of Indians, have to two parts of this treaty, one thereof to remain with the United States, and the other thereof with the Seneca nation of Indians, set their hand and affixed their seals, the day and year first above mentioned."

Schedule 1.

"This indenture, made and concluded between Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, in the county of Ontario, of the one part, and the chiefs and head-men of the Seneca nation of Indians, on the other part, at a council duly assembled and held at Buffalo creek in the State of New York, on the twentieth day of May, in the year one thousand eight hundred and forty-two, in the presence of Samuel Hoare, the superintendent thereto authorized by and on the part of the commonwealth of Massachusetts, and of Ambrose Spencer, a commissioner thereto duly appointed and authorized on the part of the United States.

Whereas, at a council held at Buffalo creek on the fifteenth day of January, in the year one thousand eight hundred and thirty-eight, an indenture of that date was made and executed by and between the parties to this agreement, whereby the chiefs and head-men of the Seneca Nation of Indians, for the consideration of two hundred and two thousand dollars, did grant, bargain, release, and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, all those four several tracts of land situate within the State of New York then and yet occupied by the said nation, or the people thereof, severally described in the said indenture as the Buffalo Creek reservation, containing by estimation forty-nine thousand nine hundred and twenty acres of land; the Cattaraugus reservation, containing by estimation twenty-one thousand six hundred and eighty acres of land; the Allegany reservation, containing by estimation thirty thousand four hundred and sixty-nine acres of land, and the Tonnewanda reservation, containing by estima-

tion twelve thousand eight hundred acres of land, a duplicate of which indenture was annexed to a treaty of the same date made between the United States of America and the chiefs, head-men and warriors of the several tribes of New York Indians assembled in council, which treaty was amended and proclaimed by the President of the United States on the fourth of April, one thousand eight hundred and forty, as having been duly ratified, as by the said indenture, treaty, and proclamation, more fully appear.

And whereas divers questions and differences having arisen between the chiefs and head-men of the Seneca nation of Indians, or some of them, and the said Thomas Ludlow Ogden and Joseph Fellows, in relation to the said indenture and the rights of the parties thereto, and the provisions contained in the said indenture being still unexecuted, the said parties have mutually agreed to settle, compromise, and finally terminate all such questions and differences on the terms and conditions hereinafter specified.

Now, therefore, it is hereby mutually declared and agreed by and between the said parties, as follows:

Article first. The said Thomas Ludlow Ogden and Joseph Fellows, in consideration of the release and agreements hereinafter contained on the part of the said Seneca Nation, do on their part consent, covenant, and agree, that they the said nation (the said indenture notwithstanding) shall and may continue in the occupation and enjoyment of the whole of the said two several tracts of land called the Cattaraugus reservation and the Allegany reservation, with the same right and title in all things as they had and possessed therein immediately before the date of the said indenture, saving and reserving to the said Thomas Ludlow Ogden and Joseph Fellows the right of pre-emption, and all other the right and title which they then had or held in or to the said tracts of land.

Article second. The chiefs and head-men of the Seneca nation of Indians, in consideration of the foregoing, and of the agreement next hereinafter contained, do on their part grant, release, and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, and to their heirs and assigns, in joint tenancy, the whole of the said two tracts of land severally called the Buffalo Creek reservation and the Tonnewanda reservation, and all the right and interest therein of the said nation.

Article third. It is mutually agreed between the parties hereto, that in lieu of the sum expressed in the said indenture, as the consideration of the sale and release of the said four tracts of land, there shall be paid to the said nation a just consideration-sum for the release of the two tracts hereby confirmed to the said Ogden and Fellows, to be estimated and ascertained as follows:

The present value of the Indian title to the whole of the said four tracts of land, including the improvements thereon, shall for all the purposes of this present compact be deemed and taken to be two hundred and two thousand dollars, of which sum one hundred thousand dollars shall be deemed to be the value of such title in and to all the

lands within the said four tracts exclusive of the improvements thereon, and one hundred and two thousand dollars to be the value of all the improvements within the said four tracts; and of the said sum of one hundred thousand dollars, the said Ogden and Fellows shall pay to the Seneca Nation such proportion as the value of all the lands within the said two tracts called the Buffalo Creek and Tonnewanda reservations shall bear to the value of all the lands within all the said four tracts; and of the said sum of one hundred and two thousand dollars, the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts shall bear to the value of the improvements on all the said four tracts.

Article fourth. The amount of the consideration-moneys to be paid in pursuance of the last preceding article shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows; which arbitrators, in order to such judgment and award, and to the performance of the other duties hereby imposed on them, may employ suitable surveyors to explore, examine and report on the value of the said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity in determining the amount of the said consideration money.

The same arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum which, on the principles above stated, they shall ascertain and award to be the proportionate value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonnewanda reservation; and in case the said arbitrators shall disagree as to any of the matters hereby submitted to them, they may choose an umpire, whose decision thereon shall be final and conclusive, and the said arbitrators shall make a report in writing of their proceedings in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York, in order to their being recorded; one of such reports to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows.

Article fifth. It is agreed, that the possession of the two tracts hereby confirmed to the said Ogden and Fellows, shall be surrendered and delivered up to them as follows, viz: The forest or unimproved lands on the said tracts, within one month after the report of the said arbitrators, shall be filed in the office of the Department of War, and the improved lands within two years after the said report shall have been so filed; provided always, that the amount to be so ascertained and awarded, as the proportionate value of the said improvements, shall, on the surrender thereof, be paid to the President of the United States, to be distributed among the owners of the said improvements, according to the determination and award of the said arbitrators, in this behalf; and provided, further, that the consideration for the release and conveyance of the said lands shall, at the time of the surrender

thereof, be paid or secured to the satisfaction of the said Secretary of the War Department, the income of which is to be paid to the said Seneca Indians annually.

But any Indian having improvements may surrender the same, and the land occupied by him and his family, at any time prior to the expiration of the said two years, upon the amount awarded to him for such improvements being paid to the President of the United States, or any agent designated by him for that purpose by the said Ogden and Fellows, which amount shall be paid over to the Indian entitled to the same, under the directions of the War Department.

Article sixth. It is hereby agreed and declared to be the understanding and intent of the parties hereto, that such of the said Seneca Nation as shall remove from the State of New York, under the provisions of any treaty made, or to be made, between the United States and the said Indians, shall be entitled in proportion to their relative numbers to the funds of the Seneca Nation; and that the interest and income of such their share and proportion of the said funds, including the consideration-money to be paid to the said nation in pursuance of this indenture, and of all annuities belonging to the said nation, shall be paid to the said Indians so removing at their new homes; and whenever the said tracts called the Alleghany and the Cattaraugus reservation, or any part thereof shall be sold and conveyed by the Indians remaining in the State of New York, the Indians so removing shall be entitled to share in the proceeds of said sales in the like proportion. And it is further agreed and declared, that such Indians owning improvements in the Cattaraugus and Alleghany tracts as may so remove from the State of New York, shall be entitled, on such removal, and on surrendering their improvements to the Seneca Nation for the benefit of the nation, to receive the like compensations for the same, according to their relative values, as in the third and fourth articles of this treaty are stipulated to be paid to the owners of improvements in the Buffalo Creek and Tonnewanda tracts, on surrendering their improvements; which compensations may be advanced by the President of the United States, out of any funds in the hands of the Government of the United States, belonging to the Seneca Nation, and the value of these improvements shall be ascertained and reported by the arbitrators to be appointed in pursuance of the fourth article.

Article seventh. This indenture is to be deemed to be in lieu of, and as a substitute for, the above recited indenture, made and dated the fifteenth day of January, one thousand eight hundred and thirty-eight, so far as the provisions of the two instruments may be inconsistent or contradictory; and the said indenture, so far as the same may be inconsistent with the provisions of this compact, is to be regarded, and is hereby declared to be rescinded and released.

Article eighth. All the expenses attending the execution of this indenture and compact, including those of the arbitration and surveys herein before referred to, and also those of holding the treaty now in negotiation between the United States and the said Seneca Nation,

except so far as may be provided for by the United States, shall be advanced and paid by the said Ogden and Fellows.

Article ninth. The parties to this compact mutually agree to solicit the influence of the Government of the United States to protect such of the lands of the Seneca Indians, within the State of New York, as may from time to time remain in their possession, from all taxes and assessments for roads, highways, or any other purpose, until such lands shall be sold and conveyed by the said Indians, and the possession thereof shall have been relinquished by them.

In witness whereof, the parties to these presents have hereunto, and to three other instruments of the same tenor and date—one to remain with the United States, one to remain with the State of Massachusetts, one to remain with the Seneca Nation of Indians, and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows—interchangeably set their hands and seals the day and year first and above written.

T. L. OGDEN, [L. S.]
JOSEPH FELLOWS. [L. S.]

	Marks.	
Ten-wan-ne-us, or Governor Blacksnake,	x	[l. s.]
Joh-nesh-ha-dih, or James Stevenson,	x	[l. s.]
Ho-wah-tan-oh-goh, or John Pierce,	x	[l. s.]
Da-gon-on-de, or William Patterson,	x	[l. s.]
Sam'l Gordon,		[l. s.]
Tunis Halftown,		[l. s.]
Hau-sa-nea-nes, or White Seneca,	x	[l. s.]
Gah-nang-ga-eot, or Young Chief.	x	[l. s.]
Thomas Jimeson,		[l. s.]
Nuh-joh-gau-eh, or Tall Peter,	x	[l. s.]
John Kennedy, jr.		[l. s.]
Tit-ho-yah, or William Jones,	x	[l. s.]
Saul Logan,		[l. s.]
Gau-geh-gruh-doh, or George Jimeson,	x	[l. s.]
N. T. Strong,		[l. s.]
Jabez Stevenson,		[l. s.]
Hau-neh-hoy-soh, or Blue Eyes,	x	[l. s.]
Samuel Wilson, or Ni-ge-jos-a,	x	[l. s.]

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William Krouse,		[l. s.]
Joseph Silverheels,		[l. s.]
Da-o-as-sah-aw, or		
Jo Hemlock,	x	[l. s.]
George Fox,		[l. s.]
Yaw-saw-ge, or		
Peter Johnson,	x	[l. s.]
Noh-sok-dah, or		
Jim Jonas,	x	[l. s.]
Deh-no-se-da, or		
Jacob Shongo,	x	[l. s.]
John Kennedy,	x	[l. s.]
Abram John,	x	[l. s.]
Job Pierce,	x	[l. s.]
Dao-nepho-gah, or		
Little Johnson,	x	[l. s.]
Jo-on-da-goh, or		
John Seneca,	x	[l. s.]
Ho-no-yea-os, or		
Jacob Bennett,	x	[l. s.]
George Turkey,		[l. s.]
Daniel Two Guns,		[l. s.]
Goat-hau-oh, or		
Billy Shanks,	x	[l. s.]
James Pierce,		[l. s.]
Gi-eut-twa-geh, or		
Robert Watt,	x	[l. s.]
Thompson S. Harris,		[l. s.]
Sah-goh-en-toh, or		
Morris Halftown,	x	[l. s.]
Seneca White,		[l. s.]
Gosh-u-aw, or		
James Shongo,	x	[l. s.]
Adam Doxtader,	x	[l. s.]
or Ti-ot-tah-co,		
James Spring,		[l. s.]
Maris B. Pierce,		[l. s.]
So-gooh-quas, or		
John Tall Chief,	x	[l. s.]
Moses Stevenson,		[l. s.]
Jonah Armstrong,	x	[l. s.]
George Deer,	x	[l. s.]
or Saw-da-ne,		
Ga-na-waa, or		
John Cook,	x	[l. s.]
Isaac Halftown,	x	[l. s.]
David Snow,	x	[l. s.]
John Bark,	x	[l. s.]

George Killbuck,	x	[l. s.]
George Dennis,	x	[l. s.]
Gaw-ne-es, or John Dickey,	x	[l. s.]
George Big Deer,	x	[l. s.]

Signed, sealed and delivered in the presence of—(the words "hereby" and the words "and Allegany" in the fifth page being interlined.)

A. DIXON,
Com'r on the part of New York.

BENJ. FERRIS,
O. H. MARSHALL,
ORLANDO ALLEN,
ASHER WRIGHT,
ELAM R. JEWETT,
CORTLAND B. STEBBINS,
JOSEPH S. WATTON.

Having, as superintendent on the part of the commonwealth of Massachusetts, attended the negotiation of a treaty, or contract, between Thomas Ludlow Ogden and Joseph Fellows, of the one part, and the chiefs and head-men of the Seneca nation of Indians, of the other part, held at Buffalo creek, in the State of New York, and concluded this twentieth day of May, in the year 1842, I do hereby certify that the foregoing instrument of writing, after being fully explained to the said chiefs and head-men, convened in council, was voluntarily agreed to, and signed and executed by them in my presence, and I hereby approve the said instrument and all the matters therein contained.

SAMUEL HOAR.

COMMONWEALTH OF MASSACHUSETTS,
City of Boston, ss:

I, Lemuel Shaw, chief justice of the supreme judicial court, do hereby certify, that on the thirtieth day of March, A. D. 1846, personally appeared before me Samuel Hoar, of said commonwealth, to me known to be the person described in, and who subscribed his name to, the within certificate; and the said Samuel Hoar acknowledged that he executed the same.

LEMUEL SHAW,
Ch. Just. Sup. Jud. Court of Mass'ts.

I have this day attended a treaty with the Seneca nation of Indians, held at Buffalo creek, in the State of New York, on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-two, when the within and preceding instrument was duly executed in my presence between Thomas Ludlow Ogden and Joseph Fellows, of the one part, and the chiefs and head-men of the said nation, on the

other part, the same having been fairly understood and explained to them, and I do hereby certify and declare my full approbation thereof.

A. SPENCER,
A Comm'r on the part of the United States.

STATE OF NEW YORK,
Wayne county, ss:

I, De Witt Parshall, do hereby certify, that on the third day of April, 1846, personally appeared before me Ambrose Spencer, of said county, to me known to be the person of that name described in, and who subscribed his name to, the within certifiate; and the said Ambrose Spencer acknowledged that he executed the same.

DE WITT PARSHALL,
Supreme Court Com'r. for Wayne county.

STATE OF NEW YORK,
County of Erie, city of Buffalo, ss:

On this 14th day of October, 1845, came before me Orlando Allen, to me known, who, being by me duly sworn, says: That he resides in the city of Buffalo; that he is acquainted with the within named Thomas L. Ogden, Governor Blacksnake, Little Johnson, James Stevenson, John Pierce, William Patterson, Samuel Gordon, Tunis Halftown, White Seneca, Young Chief, Thomas Jimeson, Tall Peter, John Kennedy, jr., William Jones, Saul Logan, George Jimeson, Nathaniel T. Strong, Jabez Stevenson, Blue Eyes, Samuel Wilson, William Krouse, John Seneca, Jacob Bennett, George Turkey, Daniel Two Guns, Billy Shanks, James Pierce, Robert Watt, Thompson S. Harris, Morris Halftown, Seneca White, James Shongo, Adam Doxtader, James Spring, Maris B. Pierce, John Tall Chief, Moses Stevenson, Jonah Armstrong, Joseph Silverheels, Jo Hemlock, George Fox, Peter Johnson, Jim Jonas, Jacob Shongo, John Kennedy, Abram John, Job Pierce, George Deer, John Cook, Isaac Halftown, David Snow, John Bark, George Killbuck, George Dennis, John Dickey and George Big Deer; and knows them to be the same persons described in, and who executed the within instrument; that he saw them severally execute the same, and that he, said Allen, subscribed his name thereto as a witness of such execution, which is to me satisfactory proof of the due execution of said instrument by said persons in this certificate above named. At the same time appeared before me Joseph Fellows, to me known to be one of the persons described in, and who executed the within instrument, and acknowledged that he executed the same for the uses and purposes therein mentioned.

H. S. CUTTING,
Com'r of Deeds for the city of Buffalo.

STATE OF NEW YORK,
Erie County, ss:

[L. S.] I, Manly Colton, clerk of the county of Erie, and of the court of common pleas thereof, do hereby certify, that H. S. Cutting, esq., whose name is subscribed to the annexed certificate of proof or acknowledgment, and thereon written, was, at the time of taking the same, a commissioner of deeds in said county, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of said H. S. Cutting, and *and* verily believe the signature to said certificate to be his genuine signature.

In testimony whereof, I have hereunto set my name and affixed the seal of the said court and county, this 24th day of February, 1846.

MANLY COLTON, *Clerk.*

Schedule K.

THE COMMONWEALTH OF MASSACHUSETTS. —

To all whom it may concern, greeting:

[L. S. JOHN DAVIS.] Whereas, on the twentieth day of May now last past, an indenture, a copy whereof is set forth in the annexed document, was duly signed and executed between Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows, of Geneva, of the county of Ontario, in the State of New York, on the one part, and the chiefs and head-men of the Seneca nation of Indians on the other part, at a council duly assembled and held at Buffalo creek, in the State of New York, by and in virtue of which indenture the said Ogden and Fellows are confirmed as purchasers of certain tracts of land therein specified and described:

And whereas the said indenture was executed in the presence and with the approval of Samuel Hoar, a commissioner on the part of this commonwealth, and of Ambrose Spencer, a commissioner on the part of the United States, a copy of the approval of each of whom is also duly set forth in the annexed document; and whereas the Senate of the United States and the President thereof have duly ratified the said instrument as a treaty:

Now, therefore, be it known that we, by our governor and council, do hereby confirm the purchase made by said Ogden and Fellows, by and under the provisions of the indenture aforesaid.

In testimony whereof, we have caused our great seal to be hereunto affixed, this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-third.

By his excellency the governor, with the advice and consent of the council.

JOHN P. BIGELOW,
Secretary of the Commonwealth.

[Endorsed on the back:]

STATE OF NEW YORK,
Secretary's Office.

Recorded in book of deeds, No. 42, page 491, &c., the 24th day of October, 1842.

ARCH'D CAMPBELL,
Dep. Sec. of State.

Schedule L.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
15th Oct., 1842.

THOMAS C. LOVE, *Clarence, Erie Co., N. Y.*

SIR: The fourth article of the treaty of the 20th May last, with the Seneca nation of Indians, provides for the appointment of two arbitrators to perform certain duties connected with the execution of said treaty; one of these is to be appointed by the Secretary of War, the other by Messrs. Ogden and Fellows, and in case of a disagreement, a third, or umpire, to be chosen by the two thus appointed.

You have been selected to perform this duty on the part of the United States, in connection with Ira Cook, esq., named by the other party, and I proceed to give you such instructions as are deemed necessary.

The third article of the treaty stipulates, that,

"The present value of the Indian title to the whole of the four tracts of lands, including the improvements thereon, shall, for all the purposes of the present compact, be deemed and taken to be $202,000; of which sum $100,000 shall be deemed to be the value of such title in and to all the lands within the said four tracts, exclusive of the improvements thereon, and $102,000 to be the value of all the improvements within the said four tracts; and of the said sum of $100,000, the said Ogden and Fellows shall pay to the Seneca Nation such portion as the value of all the lands within the said two tracts, called the Buffalo creek and Tonawanda reservations, shall bear to the value of all the lands within all the said four tracts; and of the said sum of $102,000, the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts shall bear to the value of the improvements on all the said four tracts."

The duty assigned to you and your colleague, therefore, is to place a relative value upon the land after a critical examination of it, and also to value the improvements upon the four tracts, to enable you to estimate the relative value of those upon the two tracts. To enable you to execute this duty, the fourth article provides for the employment of suitable surveyors to explore, examine, and report on the value of said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity, in determining the amount of the said consideration money.

The 4th article also provides that the same arbitrators shall award and determine the amount to be paid to each individual Indian, out of the sum which, on the principles above stated, they shall ascertain and award to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek and Tonawanda reservations. In the execution of this duty, you will make tabular lists of those Indians who are owners of improvements on the Buffalo Creek and Tonawanda reservations, placing opposite each name their value; and the like course will be pursued in reference to the improvements on the two reservations that remain to the Indians. You will also keep a correct record of all your proceedings, and make a report in writing, in duplicate, to be acknowledged or proved according to the laws of New York, in order to their being recorded; one of which reports to be filed in the War Department, and the other to be delivered to Ogden and Fellows.

The sixth article of the treaty provides, that Indians owning improvements in the Cattaraugus and Allegany tracts, (being those retained by the Indians,) who may remove from the State of New York, shall be entitled, on such removal and on surrendering their improvements to the Seneca Nation for the benefit of the nation, to receive the like compensation for the same, according to their relative values, as in the 3d and 4th articles, to be paid to the owners of improvements in the other two reservations in surrendering their improvements; which compensation may be advanced by the President of the United States, out of any fund in his hand belonging to the Seneca Nation, and the value of their improvements shall be ascertained and reported by the arbitrators, under the 4th article.

In the execution of this trust it will be necessary for you to make a personal examination of the whole of the four reservations, and give such instructions to the surveyors as you may find necessary, the appointment of a sufficient number of whom is left to yourself and your colleague at a compensation usual in that country for such service, to be defrayed by Messrs. Ogden and Fellows.

It will in like manner be necessary for you to visit each improvement, and estimate the value of whatever may in your opinion add value to the lands, designating in tabular lists to be made as before stated, for that purpose, the particular species and number or quantity of property, such as houses, fences, fruit trees, &c., &c., &c., and these lists will be appended to and form a part of your report.

Your compensation will be made by Messrs. Ogden and Fellows, to whom you are referred on that subject, and it is not doubted they will put it on a footing entirely satisfactory to you. You will communicate with your associate, Ira Cook, esq., at Byron, Genesee co., New York, and fix as early a day as conveniently practicable for entering upon your duties. A copy of these instructions has been sent to Messrs. Ogden and Fellows.

Very respectfully, your ob't serv't,

T. HARTLEY CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
June 3d, 1843.

THOMAS C. LOVE, *Clarence, Erie Co., New York.*

SIR: The instructions addressed to you on the 15th October last, it is not proposed in any substantial particular to change; but the Secretary of War has instructed me to advise you that in his opinion the labors of yourself and associate will be much facilitated, by employing surveyors to ascertain the extent of cleared land, and the value of the various kinds of improvements they shall find on each farm, as many surveyors as you may think it expedient to employ with a view to the greatest expedition. One or more on each reservation might be engaged at the same time, who should report to you in a tabular or other convenient form, after which your own inspection might be more close, though it would be necessary still that you should see each habitation and farm, &c., but with the report of the surveyor before you, notes could be made that would enable you to do justice, and the time and labor be saved that must otherwise be spent by you in making the detailed statements that the surveyor would furnish; nor will the expense which is to be paid by Messrs. Ogden and Fellows be increased by the mode of proceeding suggested, as the time will be proportionably shortened.

Very respectfully, your ob't serv't,
T. H. CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
June 3d, 1843.

IRA COOK, Esq., *Byron, Genesee Co., New York.*

SIR: The instructions addressed to Thomas C. Love, esq., on the 15th October last, to which you were referred in my communication of 23d ultimo, it is not proposed in any substantial particular to change, but the Secretary of War has instructed me to advise you that in his opinion the labors of yourself and associate will be much facilitated by employing surveyors to ascertain the extent of cleared land, and the value of the various kinds of improvements they shall find on each farm, as many surveyors as you may think it expedient to employ, with a view to the greatest expedition. One or more on each reservation might be engaged at the same time, who should report to you in a tabular or other convenient form, after which your own inspection might be less close, though it would be necessary still that you should see each habitation and farm, &c., but with the report of the surveyor before you, notes could be made that would enable you to do justice, and the time and labor be saved that must otherwise be spent by you in making the detailed statements that the surveyor would furnish; nor will the expense which is to be paid by Messrs. Ogden and Fellows be increased by the mode of proceeding suggested, as the time will be proportionably shortened. In my letter to you of 23d ultimo, I omitted to say, as was done to Mr. Love, when appointed, that your compen-

sation will be made by Messrs. Ogden and Fellows, to whom you are referred on that subject; and it is not doubted that they will put it on a footing entirely satisfactory to you.

Very respectfully, your ob't serv't,

T. H. CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
September 23d, 1843.

Messrs. T. C. LOVE AND IRA COOK, *Buffalo.*
Care of Stephen Osborne.

GENTLEMEN: The enclosed report, as you will perceive, was drawn from this office by a letter from T. L. Ogden, esq., and will explain my views on the subject of your duties as appraisers, which are fully concurred in by the Secretary of War, who directs that a copy be sent to you for your government. You will be pleased therefore to adopt it as instructions to yourselves, and carry out all that it contains with as much energy and expedition as you can bring to bear on the various points.

Very respectfully, your ob't serv't,

T. H. CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
September 14th, 1843.

Hon. J. M. PORTER, *Secretary of War.*

SIR: The letter of Thomas L. Ogden, esq., of New York, to me, of 5th instant, which was referred to the Secretary of War, has been returned to this office for a report. Mr. Ogden, referring to the fact that certain Seneca emigrants had gone into possession of portions of the Buffalo Creek reservation under an arrangement between the pre-emptors and the Seneca Indians, in anticipation of the regular surrender under the treaty, complains that the Seneca settlement is subject to great annoyance, and says, (in which I do not doubt he is correct,) "that no effectual remedy can be provided for these evils, nor for those which this company are suffering in the destruction of their timber, except in the speedy consummation of the treaty," that is, in completion of the appraisement by the arbitrators appointed under the 4th article of the treaty of May, 1842, and to subsequent surrender, according to the terms of the compact.

Mr. Ogden complains not of the arbitrators, Thomas C. Love and Ira Cook, esquires, but of the system of examination of improvements and lands preparatory to an appraisement thereof, which they have adopted, as likely to prevent the completion of their duty, during this year, which is further endangered by "feeble health of Judge Love."

The 5th article of the treaty provides for the surrender of the forest, or unimproved lands on the Buffalo Creek and Tonawanda reservations, "within one month *of* the report of the arbitrators shall be filed in

the office of the Department of War, and the improved lands within two years after the said report shall have been so filed." It will be thus seen that the investigation and report of the appraising arbitrators is a preliminary step to any other action whatever, under the treaty.

A correspondence between Messrs. Ogden and Fellows, and the Department, resulted in instructions to Messrs. Love and Cook, on the 3d June last, of which I send a copy. The object was to expedite as much as possible, the performance of their duties by the arbitrators, and the letter of instruction was drafted after conversation with you, and in fact some of the suggestions in it originated with yourself. Nor do I see how they could be more plainly directed to make all the haste that consisted with doing justice to the Indians and the pre-emptors. Mr. Ogden, referring to the said instructions and the course of proceeding pointed out in them, says: "I therefore respectfully suggest to you the propriety of more precise instructions to the arbitrators, to adopt and pursue it steadily, as a necessary means of accomplishing during the present season an object essential to the interests of all concerned.

Although I do not clearly perceive how more definite directions can be given, still being anxious and thinking that Messrs. Ogden and Fellows have a right to expect that the work alluded to will be done as soon as may be conveniently practicable, it might be proper to press upon the arbitrators, more urgently than heretofore, the necessity that exists for the examination and appraisement at an early day, and that this season ought on no account to pass without its completion, if it be possible to effect it.

The gentleman upon whom this duty devolves should, in my opinion, employ as many judicious surveyors as can be usefully engaged in the unappraised reservations. These persons could be all at work at the same time, under oath, if you choose so to direct, in preparing tabular statements and such descriptions of the improvements and land, for the arbitrators, as would enable the latter very soon to close their labors, and this without any expense additional to Messrs. Ogden and Fellows, who bear it all. Thus the necessity for winding up the treaty covenants on all sides. The interests of the Senecas, who cannot advance in improvement until permanently fixed on the Cattaraugus and Alleghany reservations, and justice to the pre-emptors, or their alienees, whose timber will be the prey of Indian and white depredators until possession is changed, alike require. And this is the more necessary, because the Department can take no steps other than it has to arrest the depredations complained of. The Senecas have no right to cut the timber to sell, nor to leave the land to others for such a purpose; but the occupants and the owners of the fee-simple are subject to the laws of the State of New York, to which either can resort in enforcement of their rights. The Department can do nothing beyond exerting persuasive means with the Senecas, and these have been used until they are exhausted.

Very respectfully, yours,

T. H. CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
December 5th, 1843.

THOMAS C. LOVE & IRA COOK, Esqs., *New York*.

GENTLEMEN: I have received your communication of 23d October, covering a written paper addressed by the chiefs of the Tonawanda reservation in New York to Judge Love, informing that the arbitrators would not be permitted to enter upon the reservation to appraise the land and improvements.

I have, amidst the present press of business incident to the commencement of the session of Congress, not answered your letter, because, on the subject to which your letter refers, the Senecas residing on the Tonawanda reservation had been written to over and over again, and the opinion of the Department as strongly expressed as language enabled it to do, that the Tonawanda reservation belonged, before the treaty of 1838, to the whole Seneca Nation, by a part of which it was occupied, and that whatever disposition was made of it, by that treaty and the subsequent one of 1842, bound the whole nation of Senecas. This is undoubtedly true. The Indians on that reservation have an interest in the proportion their number bears to the whole tribe in the Alleghany and Cattaraugus reservations, and will receive their share of the value that shall be put upon the Buffalo and Tonawanda reservations. The latter they must not only allow you to value, but they must give up the possession of it, according to the treaty of 1842, and move on one of the retained reservations.

There is no possible alternative. The treaty binds them and it binds the United States, and must be executed; any course but quiet submission to its terms will be destructive to the Tonawandas and Senecas.

I send you an extract from a communication I made on the 25th June, 1842, to Jemmy Johnson and John Blacksmith, the same men who addressed you, offering opposition to your proceedings, and other chiefs on the Tonawanda reservation, giving them in very decided terms the views of the Department.

I would recommend that you proceed immediately to the reservation, and having convened the Tonawanda chiefs, lay before them this letter, as well as the extract sent, and inform them that it makes no difference whether they signed the treaty of 1842 or not, and that although not one of them put his name to it, they and all of the Tonawanda Indians are as much bound as if every man of them had signed the treaty of 1842, as well as that of 1838, and will therefore allow you to proceed in your duty, and prepare to yield the possession, according to the treaty. I have to-day written to the Tonawanda chiefs also.

Very respectfully, your obedient servant,

T. H. CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
July 6th, 1844.

STEPHEN OSBORNE, Esq., *Buffalo, New York.*

SIR: The treaty concluded with the Seneca nation of Indians on the 20th May, 1842, after conveying to Ogden and Fellows their whole interest in the two tracts known as the Buffalo Creek and Tonawanda reservations, (2d article,) and after establishing in its 3d article a basis for the ascertainment of the consideration that the grantees are to pay, proceeds in these words: "Article 4th. The amount of the consideration-moneys, to be paid in pursuance of the last preceding article, shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows," &c., &c. "The said arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum which, on the principles above stated, they shall ascertain and award to be the proportionate value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonawanda reservation,," &c., &c., &c. "And the said arbitrators shall make a report in writing of their proceedings, in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York, in order to their being recorded; one of such reports to be filed in the office of the Secretary of the War Department, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows." The awards of such arbitrators have been made, and the reports thereof delivered as prescribed. The stipulation of the above article having thus been fully carried out, the only step yet to be taken by the Department, as preliminary to the surrender of the Indian property to its assignees, is the appointment of an agent to receive and pay over to each Indian entitled his proportion of the consideration-money as determined by the arbitrators; such an agent is provided for in the 5th article, as will be seen by the following extracts: "Article 5th. It is agreed the possession of the two parts hereby confirmed to the said Ogden and Fellows shall be surrendered and delivered up to them as follows, viz: The forest and unimproved land on the said tract, within one month after the report of the said arbitrators shall be filed in the office of the Department of War, and the improved lands within two years after the said report shall have been so filed: Provided always, that the amount to be so ascertained and awarded, as the proportionate value of the said improvements, shall on the surrender thereof be paid to the President of the United States, to be distributed among the owners of the said improvements, according to the determination and award of the said arbitrators," &c., &c., &c.

"But any Indian having improvements may surrender the same, and the land occupied by him and his family, at any time prior to the expiration of the said two years, upon the amount awarded to him for such improvements being paid to the President of the United over

or any agent designated by him for that purpose by the said Ogden and Fellows, which amount shall be paid over to the Indian entitled to the same under the direction of the War Department." The duty is a very plain one, and falls in so naturally with those which your present office ordinarily imposes, that it has not been thought necessary or consistent with a proper economy to charge any one not already in the service with it, and I am instructed by the Secretary of War to inform you that it has been assigned to you.

You will therefore take prompt steps to give publicity amongst the Indians to this appointment, as it is important that any desiring to surrender their property should know that there is now an agent duly authorized to pay the consideration, and that no impediment to their removal longer exists. A copy of so much of the arbitrators' report as shows the amount of money awarded to each Indian accompanies this communication, and you will see that the payment tendered to and received by the Indian corresponds in every case with this record. It will be proper to take all the receipts (specifying in the usual form the objects of the payment) in triplicate, one to be sent to the Department, one for Messrs. Ogden and Fellows, and one to be retained for yourself. It is not anticipated that there will be any necessity for you to travel about the reservation in the prosecution of this business. It being thought that it will be sufficient to announce yourself as prepared at your sub-agency to act for the Indian; but should any such traveling be unavoidable, the actual expense thereof will be allowed you, payable, as per 8th article of treaty, by Ogden and Fellows.

Very respectfully,
Your ob't serv't,
T. H. CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
August 29th, 1844.

STEPHEN OSBORNE, Esq., *Sub-Agent, Buffalo, New York.*

SIR: A letter received at this office from Messrs. Ogden and Fellows, of the 24th inst., makes complaint of your refusal to receive certain sums of money offered to you by them for the value of improvements under the treaty with the Senecas.

It is a source of regret to the Department that there seems to be no end to the perplexities and vexations arising out of the execution of the treaty with those Indians. You as the agent of the Government are bound to receive the approved value of the improvements of even a single tract of land, and the surrender should be made simultaneously with the payment of the value thereof. There can be no possible objection to your receiving the money, and retaining it until satisfactory evidence is shown in regard to the surrender of the improvements. This is the intent and meaning of the treaty, and with the right disposition there should be no trouble about it. You will therefore please act accordingly.

Very respectfully,
Your ob't serv't,
T. H. CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
September 20, 1844.

S. OSBORNE, esq., *Buffalo, New York.*

SIR: I have the honor to acknowledge the receipt of your letter of the 16th inst., relative to the receipt of payments for the Senecas, according to the awards made them for their improvements.

The Department cannot give more explicit orders on this subject than those contained in the letters of this office to you the 29th and 30th ultimo, (the receipt of which you acknowledge,) except that you shall receive yourself the money for each Indian improvement instead of the Indian, and hold it as his trustee until otherwise instructed by the Department.

This is done in order that the Indian may not squander the sum he is entitled to, and that you may be able, if required, to pay him in instalments, or lay it out in improvements on the land to which the Indian intends removing. The treaty expressly provides that the money shall be paid direct to the Government, and not to the Indian, who is to receive the same from the United States. It can make no difference to Messrs. Ogden and Fellows.

Very respectfully,
Your ob't serv't,
T. H. CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
October 18, 1844.

T. L. OGDEN, Esq., *now at Buffalo, New York.*

SIR: I received your letter of 12th of September last, with its enclosures, and again your communication of 12th inst., requesting an answer to the former. It is true the Secretary of War was absent, as you suppose; but after what I had written to sub-agent Osborne on the 29th August last, and communicated to you, and after having addressed him further on the 20th September ult., which I think was communicated to some one on your behalf at my office, I did not suppose any specific answer to your communication was required, nor do I now see how I could vary the instructions advantageously, or that any measure could be adopted by the department, beyond which it has already done, unless indeed it would be to remove Mr. Osborne as agent, or at least to appoint some one else to receive money from you for Indian improvements. I sent copies of the letters to Mr. Osborne above referred to.

The 5th article of the treaty provides the Indians shall surrender their improved lands within two years after the report of appraisements shall be filed in the War Department, but that any Indian may surrender his improvements at any time prior to the expiration of said two years, "upon the amount awarded to him for such improvements being paid to the President of the United States, or any agent designated by him for that purpose, by the said Ogden and Fellows" to be paid over to the Indian under the direction of the War Department.

It is manifest, therefore, that the money ought not to be paid to the Indian according to the treaty, and it is certain that if it is, he will not have a cent of it in a few days, whereas if it be paid to him as the department shall direct, it may be made useful in establishing him on the retained reservations. These considerations induced me to amend the instructions of 29th August, by those of 20th September.

If the Indians come forward and are willing to surrender their improvements to you on payment of their appraised value, it is Mr. Osborne's duty to receive such value, and hold it subject to the further orders of the department, according to the treaty and his instructions. It must be however a simple payment of the entire amount in money, involving no settlement of accounts or claims. Mr. Osborne professes entire willingness to obey his instructions, and I cannot but imagine there must be some want of proper disposition, or there could be no difficulty. The United States, you are fully aware, are only a party to receive the amounts due the Indians, as their trustee. The State laws, and if necessary the State courts, must do the rest.

I have conversed with the Secretary of War, who is unwilling to censure Mr. Osborne by appointing another person to this particular duty, much less to remove him from his sub-agency.

I shall send him a copy of this letter, and hope you will move on harmoniously, at least so far as the United States are to perform a purely ministerial duty clearly marked out by the treaty, by which they must be governed.

Very respectfully,
Your ob't serv't,
T. H. CRAWFORD.

WAR DEPARTMENT, OFFICE INDIAN AFFAIRS,
October 19, 1844.

STEPHEN OSBORNE, Esq., *Sub-Agent, Buffalo, New York.*

SIR: I enclose you a copy of a letter dated 18th October inst., to Thos L. Ogden, esq., in answer to communications from him of 21st September and 12th inst. It contains the sentiment of the department (heretofore communicated to you,) which, as hitherto enjoined, you will regard as instructions to you.

Very respectfully,
Your ob't serv't,
T. H. CRAWFORD.

Schedule M.

Whereas at a council held at Buffalo creek in the State of New York, on the twentieth day of May, in the year of our Lord one thousand eight hundred and forty-two, an indenture of that date was made and executed by and between Thomas L. Ogden of the city of New York, and Joseph Fellows of Geneva, in the county of Ontario, of the one part, and the chiefs and head-men of the Seneca nation of Indians in council duly

assembled, in the presence of Samuel Hoare, the superintendent thereto authorized and appointed by and on the part of the commonwealth of Massachusetts, and of Ambrose Spencer, a commissioner thereto duly appointed and authorized on the part of the United States, by which said indenture the said parties thereto among other things made and entered into certain releases, covenants and agreements relative to the sale and conveyance by the said chiefs and head-men of the Seneca nation, to the said Thomas L. Ogden and Joseph Fellows, of those four several tracts of land situate in the State of New York, then and yet occupied by the said nation or the people thereof, and severally described in the said indenture as the Buffalo Creek reservation, the Cattaraugus reservation, the Allegany reservation and the Tonnawanda reservation, a portion of the third article of which said indenture is in these words, viz:

"The present value of the Indian title to the whole of the said four tracts of land, including the improvements thereon, shall for all the purposes of this present compact be deemed and taken to be two hundred and two thousand dollars; of which sum one hundred thousand dollars shall be deemed to be the value of such title in and to all the lands within the said four tracts, exclusive of the improvements thereon, and one hundred and two thousand dollars to be the value of all the improvements within the said four tracts; and of the said sum of one hundred thousand dollars, the said Ogden and Fellows shall pay to the Seneca Nation such proportion as the value of all the lands within the said two tracts, called the Buffalo Creek and Tonnewanda reservations, shall bear to the value of all the land within all the said four tracts; and of the said sum of one hundred and two thousand dollars, the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts shall bear to the value of the improvements on all the said four tracts."

And the fourth article of which said indenture is in these words, viz:

"The amount of the consideration-moneys to be paid in pursuance of the last preceding article shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows, which arbitrators, in order to such judgment and award and to the performance of the other duties hereby imposed on them, may employ suitable surveyors, to explore, examine and report on the value of the said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity, in determining the amount of the said consideration-money.

"The same arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum, which, on the principles above stated, they shall ascertain and award to be the proportional value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonnewanda reservation; and in case the said arbitrators shall disagree as to any of the matters hereby submitted

to them, they may choose an umpire, whose decision thereon shall be final and conclusive; and the said arbitrators shall make a report in writing of their proceedings in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York, in order to their being recorded, one of such reports to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows." Which said indenture is recited and incorporated in a certain treaty of the same date, made be tweenthe United States of America, on the one part, and the chiefs, head-men, and warriors of the Seneca nation of Indians, duly assembled in council, on the other part, which treaty was proclaimed by the President of the United States on the twentieth day of August, in the year of our Lord one thousand eight hundred and forty-two, as having been duly ratified and confirmed, as by the said indenture, treaty, and proclamation more fully appear.

And whereas, the undersigned, Thomas C. Love, of the city of Buffalo, Erie county, New York, (late of the town of Clarence, in said county,) and Ira Cook, of the town of Byron, Genesee county, New York, have been duly named, constituted, and appointed the arbitrators contemplated by the above recited fourth article of the said indenture—the said Thomas C. Love by the Secretary of the War Department of the United States, and the said Ira Cook by the said Ogden and Fellows—and have performed and discharged the duties imposed upon them as such arbitrators, so far forth as was in their power to do:

Now, therefore, pursuant to the provisions of the said fourth article of the said indenture, the undersigned, the arbitrators aforesaid, do hereby report as follows, viz:

That they have this day agreed upon all the matters in and by the said indenture submitted to them the said arbitrators.

That they have personally, and by the aid of suitable surveyors employed for that purpose, thoroughly examined and explored the said tracts of land described as the Buffalo Creek reservation, the Cattaraugus reservation, and the Allegany reservation, and all the improvements upon each of them, and have ascertained the contents of each of said three tracts of land last named.

That said tract of land described as the Buffalo Creek reservation contains forty-nine thousand nine hundred and twenty acres.

That the tract of land described as the Cattaraugus reservation contains twenty-one thousand seven hundred and sixty-seven acres.

That said tract of land described as the Allegany reservation contains twenty-nine thousand two hundred and thirty-eight acres, and eighty-three one-hundredths of an acre.

That the schedule marked "A," and entitled "A schedule of the improvements on the Buffalo Creek reservation," which is signed by said arbitrators, and is annexed hereto, and made a part hereof, contains a full, true and particular description of every improvement upon said tract of land described as the Buffalo Creek reservation, the value of each of said improvements, the name of the individual Indian own-

ing each of said improvements, the entire value of all the improvements owned by each individual Indian, and the amount to be paid to each individual Indian for such improvements out of the sum which the undersigned arbitrators have ascertained and awarded to be the proportionate value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonnewanda reservation, as hereinafter contained.

That the schedule marked B, and entitled "A schedule of the improvements on the Cattaraugus reservation," which is signed by the said arbitrators, and is annexed hereto, and made a part hereof, contains a full, true, and particular description of every improvement upon said tract of land, described as the Cattaraugus reservation, the value of each of said improvements, the name of the individual Indian owning each of said improvements, and the entire value of all the improvements owned by each individual Indian.

That the schedule marked C, and entitled "A schedule of the improvements on the Allegany reservation," which is signed by the said arbitrators, and is annexed hereto, and made a part hereof, contains a full, true, and particular description of every improvement upon said tract of land described as the Allegany reservation, the value of each of said improvements, the name of the individual Indian owning each of said improvements, and the entire value of all the improvements owned by each individual Indian.

That they have determined, adjudged, and awarded, and they, the said arbitrators, do hereby determine, adjudge, and award, that of the sum of one hundred thousand dollars, which in and by the said fourth article of the said indenture is deemed to be the value of the Indian title to all the lands within the said four tracts, exclusive of the improvements thereon, the said Ogden and Fellows shall pay to the said Seneca Nation the sum of seventy-five thousand dollars, as the proportion which the value of all the lands within the said two tracts, called the Buffalo Creek reservation and the Tonnewanda reservation, bears to the value of all the lands within all the said four tracts.

That they have determined, adjudged, and awarded, and they, the said arbitrators, do hereby determine, adjudge, and award, that of the sum of one hundred and two thousand dollars, which in and by the said fourth article of the said indenture is deemed to be the value of all the improvements within the said four tracts, the said Ogden and Fellows shall pay to the said Seneca Nation the sum of fifty-eight thousand seven hundred and sixty-eight dollars and ninety-six cents, as the proportion which the value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonnewanda reservation, bears to the value of the improvements on all the said four tracts.

That they have determined, adjudged, and awarded, and they, the said arbitrators, do hereby determine, adjudge, and award, that the amount to be paid to each individual Indian named in the aforesaid schedule marked A, is the sum which in the said schedule marked A is set opposite his or her name as the amount to be paid to him or her

for his or her improvements out of the said sum of fifty-eight thousand seven hundred and sixty-eight dollars and ninety-six cents, which the undersigned arbitrators have so as aforesaid ascertained and awarded to be the proportionate value of the improvements on the said two tracts, called the Buffalo Creek reservation and the Tonnewanda reservation.

That the said arbitrators have faithfully, and to the utmost of their power and ability, endeavored fully to perform and discharge the duties imposed upon them as such arbitrators, in relation to the Tonnewanda reservation, and the improvements thereon, but that they have been forcibly prevented from such full performance and discharge of their said duties by the action of that portion of the said Seneca Nation which occupies the said Tonnewanda reservation.

That on the twenty-second day of October last, they, the said arbitrators, repaired to the said Tonnewanda reservation, accompanied by suitable surveyors, for the purpose of exploring and examining the same and the improvements thereon, pursuant to the provisions of the said fourth article of the said indenture; that having been informed from creditable sources that that portion of the Seneca Nation residing on the said Tonnewanda reservation had determined not to permit the arbitrators to go upon that reservation and discharge their duties as such arbitrators, they, the arbitrators, called a council of that portion of the Seneca Nation residing on that reservation, which council assembled at the council-house on said reservation, and was composed of the chiefs and head-men, and a very large majority (and nearly all) of the said portion of the Seneca Nation residing on said reservation; that the said arbitrators, as fully as it was in their power, explained to the said council the provisions and obligations of the aforesaid indenture and treaty, the rights and duties of the parties thereto, and particularly of the Seneca Nation under said treaty and indenture, their character and duties as such arbitrators, and the object of their coming. That the said arbitrators also used every means in their power to persuade them to permit the said arbitrators to proceed and discharge their duties upon that reservation, and to furnish the necessary information and assistance for that purpose. That the said council, with unanimous voice and action, absolutely and unconditionally refused to permit the said arbitrators to explore or examine the said reservation or any part thereof, or to ascertain or value the improvements thereon, or any of them, or to perform any act in discharge of their duties as such arbitrators in relation to that reservation, and directed the said arbitrators to leave the said reservation, which the said arbitrators accordingly did.

That the said arbitrators forthwith reported to the Secretary of the War Department of the United States their attempt to discharge their duties as such arbitrators in relation to the said Tonnewanda reservation, and the result of such attempt as above set forth. That in reply thereto the said Secretary of the War Department instructed the said arbitrators to make a further attempt to discharge their duties in relation to the said Tonnewanda reservation, and for that purpose to convene another council of that part of the said Seneca Nation residing on that re-

servation, and make further efforts to secure their consent to and aid in the performance by the said arbitrators of their duties in relation thereto.

That in pursuance of such instructions, the said arbitrators, on the twenty-seventh day of December last, again repaired to the said Tonnewanda reservation, and again convened a council of that portion of the Seneca Nation residing on that reservation, which council forthwith assembled at the council-house on said reservation, and was composed of the chiefs and head-men, and a very large majority (and nearly all) of that part of the Seneca Nation residing on the said Tonnewanda reservation; that the said arbitrators communicated to the said council the said instructions so as aforesaid received by them from the Secretary of the War Department, and accompanied the same with a renewed and full explanation of the provisions and obligations of the aforesaid indenture and treaty, the rights and duties of the Seneca Nation under it, the duties of the arbitrators and the object of their coming, and the opinion of the arbitrators, of the consequences to that portion of the Seneca Nation residing on the Tonnewanda reservation of a continued refusal on their part to permit the discharge of their duties by such arbitrators in relation to that reservation, and to give the necessary information and assistance for that purpose. That the said arbitrators again used every means in their power to prevail upon the said council to abandon their opposition to the discharge, by the said arbitrators, of their duties in relation to the said Tonnewanda reservation, and to cooperate with them in such discharge of their duties; that the said council again with unanimous resolution absolutely refused to permit the said arbitrators to do any act upon that reservation in discharge of their duties in relation thereto. That the said arbitrators then declared their intention to proceed to discharge their said duties notwithstanding the resolution of the council, and gave notice that they would then proceed to ascertain and value the improvements of any individual Indian on the said reservation who would give his or her name, point out his or her improvements, and give the necessary information relative to the same. That the declaration and notice by the arbitrators produced a violent excitement in the council, and the arbitrators were told that unless they immediately withdrew from said reservation they would be carried by force without the bounds thereof; and thereupon the said arbitrators were each taken by the arm by a chief, and accompanied by him and warriors off the said reservation. That by the means and manner above set forth, the said arbitrators have been prevented from exploring or examining the said Tonnewanda reservation or the improvements thereon, or any of them, therefore they cannot determine the amount to be paid to any individual Indian out of the sum which they have as aforesaid ascertained and awarded to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonnewanda Reservation, and that it would have been impossible for them, the said arbitrators, to have performed this portion of their duties in relation to the Tonnewanda re-

servation without information from, and the active aid and co-operation of, the individual Indian residing on that reservation. That by the aid of previous surveyors of the said tract called the Tonnewanda reservation, of the accuracy of which the said arbitrators entertain no doubt, they have found and estimated that it contains twelve thousand eight hundred acres of land. That having been in the manner and by the means above set forth prevented from ascertaining, by personal examination and surveys, what were the improvements on the said tract called the Tonnewanda reservation, or the value of such improvements, or any particulars in relation thereto, they, the said arbitrators, have, from the best information they could obtain, estimated and set down, and they do hereby estimate and set down the entire value of all the improvements on that reservation, at the sum of twenty-eight thousand dollars, and do hereby award for all the improvements on said reservation the proportionate sum of fifteen thousand and eighteen dollars and thirty-six cents, as appears in Schedule D, hereto annexed, and made a part of this report. Finally, that all the fees, charges, and expenses of them, the said arbitrators, and of all the surveyors and other persons by them employed in the discharge of their said duties, have been paid and discharged by the said Ogden and Fellows.

In witness of all which, they, the said arbitrators, have set their hands and seals hereunto, in duplicate, one of them to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows. Done at the city of Buffalo, in the State of New York, the twenty-sixth day of March, one thousand eight hundred and forty-four.

THOMAS C. LOVE, [L. S.]
IRA COOK. [L. S.]

Sealed and delivered in presence of:
WM. YOUNG, JR.,
CHARLES L. MAYER.

STATE OF NEW YORK, *Erie County, ss:*

I hereby certify, that on this 26th day of March, 1844, before me came Thomas C. Love and Ira Cook, with whom I am personally acquainted, and whom I know to be the same persons described in and who executed the foregoing instrument and the schedules thereto annexed, and they severally acknowledged that they had executed the same.

N. K. HALL,
First Judge, Erie Co. Courts,
and Counsellor at Law in the Supreme Court.

Recapitulation.

	Valuation of Improvements.	Sums Awarded.	
Buffalo reservation,	81,567 28	43,750 60	
Tonnewanda "	28,000 00	15,018 36	$58,768 96, Payable by Ogden & Fellows.
Cattaraugus "	42,190 25	22,629 61	
Allegany "	38,409 50	20,601 43	$43,231 04, Payable by the U. S. Government.
	$190,167 03		$102,000 00

Schedule N.

Doc. No. 1.—No. 2178.

To Thomas L. Ogden and Joseph Fellows:

At sight pay to William Selden, Treasurer of the United States, or order, for the use of the said States, seventy-five thousand dollars, being the amount awarded to be the consideration-money payable to the Seneca nation of Indians, as the value, exclusive of the improvements thereon, of the two tracts of land severally called the Buffalo Creek reservation and the Tonawanda reservation, in pursuance of the third article of the treaty made between the said Ogden and Fellows, and the Seneca nation of Indians, dated 20th May, 1842.

And for so doing, this shall be your warrant. Given under my hand and the seal of the Treasury, this eleventh day of June, in the year of our Lord one thousand eight hundred and forty-four, and of independence the sixty-eighth.

[L. S.]

McC. YOUNG,
Secretary of the Treasury, ad interim.
J. W. McCULLOCK,
Comptroller.

$75,000, R. & E. 12th. Recorded 12th. A. J. L. N.

Countersigned by T. L. Smith, *Register.*

Deposit in the Bank of Commerce, in New York, by Thomas L. Ogden and Joseph Fellows, on account, as above stated.

April 24th, 1844. $75,000.

See letter addressed by the Secretary of War to the Secretary of the Treasury, under date June 10th, 1844, annexed hereto, and also the certificate of deposit referred to in said letter, and marked No. 822.

W. SELDEN, *Tr. U. S.*

[Endorsed:] Received 11th June, 1844.

No. 822. Bank of Commerce in New York,
April 24th, 1844.

I certify that Thomas L. Ogden and Joseph Fellows have this day deposited with this bank, to the credit of the Treasurer of the United States, seventy-five thousand dollars, in satisfaction of the amount determined and awarded to be the consideration-money payable to the Seneca nation of Indians, as the value, exclusive of the improvements thereon, of the two tracts of land severally called the Buffalo Creek reservation and the Tonawanda reservation, in pursuance of the third article of the treaty made between the said Ogden and Fellows and the Seneca nation of Indians, dated 20th May, 1842, for which I have signed duplicate receipts.

$75,000. GEO. CURTIS, *Cas'r.*

[Endorsed across:] JAS. HANEMAN.

WAR DEPARTMENT, *June* 10*th*, 1844.

SIR: I have the honor to transmit herewith a certificate of deposit for $75,000. This deposit was made by Messrs. Ogden and Fellows on the 24th of April last in the Bank of Commerce, N. Y., to the credit of the Treasurer of the United States, and it is to be invested in stock for the benefit of the Seneca Indians, of New York, under the 3d article of the treaty of 1842. You will therefore please cover the amount by warrant into the Treasury, under the head of Appropriation "Trust Fund." "Senecas, New York."

Very respectfully,

Your ob't serv't,

WM. WILKINS,
Secretary of War.

To the HON. SECRETARY OF THE TREASURY.

Doc. No. 2.—No. 2896.

To JOSEPH FELLOWS, survivor of THOMAS L. OGDEN.

At sight pay to William Selden, Treasurer of the United States, or order, for the use of the said States, fifteen thousand and eighteen dollars and thirty-six cents, for the use of the President of said United States, according to the provisions of the 5th article of the amended treaty of the 20th May, 1842, between the said Thomas L. Ogden and Joseph Fellows, and the chiefs and head-men of the Seneca nation of Indians, being the sum awarded by appraisers duly appointed for Indian improvement on the Tonnewanda reservation.

And for so doing this shall be your warrant.

Given under my hand and the seal of the Treasury, this thirty-first day of March, in the year of our Lord one thousand eight hundred and forty-six, and of independence the 70th.

[L. S.] R. J. WALKER, *Secretary of the Treasury.*
J. W. McCULLOCK, *Comptroller.*

R. & E. 7th, A. $15,018 36. Recorded J. D. B.
Countersigned by R. H. GILLETT, *Register.*

Deposit in the Bank of Commerce, New York, March 27, 1846, $15,018 36. S. M. B. See the certificate of deposit annexed hereto marked A.

W. SELDEN, *Treas.*

[Endorsed:] Received 31 March, 1846.

WAR DEPARTMENT, *March* 31*st*, 1846.

SIR: I have the honor to transmit herewith a certificate of deposit for fifteen thousand eighteen dollars and thirty-six hundredths, made by Joseph Fellows, esqr., on the 27th inst., in the Bank of Commerce in New York, to the credit of the Treasurer of the United States, it being the sum awarded by appraisers duly appointed for Indian improvements on the Tonnewanda reservation, under the 5th article of the amended treaty of the 20th May, 1842, between the late Thomas L. Ogden and Joseph Fellows, and the Seneca nation of Indians re-

siding in New York, which amount is to be paid over to the Indians entitled to the same, under the direction of the War Department.

You are therefore hereby respectfully requested to cover the amount by warrant into the Treasury, under the head of appropriations, "awards for improvements surrendered" by the Senecas of New York.

Very respectfully, your ob't servant,

(Signed) W. L. MARCY,
Sect. of War.

Hon. R. J. WALKER,
Sect. of the Treasury.

A. Annex and cov. Wt. 2896. Bank of Commerce in New York, No. 1372.

MARCH 27, 1846.

I certify that Joseph Fellows, survivor of Thomas L. Ogden, has this day deposited with this bank to the credit of the Treasurer of the United States, fifteen thousand eighteen dollars and thirty-six hundredths, for the use of the President of said United States, according to the provisions of the 5th article of the amended treaty of the 20th May, 1842, between the said Thomas L. Ogden and Joseph Fellows, and the chiefs and head-men of the Seneca nation of Indians, being the sum awarded by appraisers duly appointed, for Indian improvements on the Tonnewanda reservation, for which I have signed duplicate receipts.

GEO. CURTIS, *Cash.*

$15,018 36. [Endorsed across:] JAS. HANEMAN.

And because the said supreme court now here is not yet advised what judgment to give of and upon the premises, therefore the process thereof is continued between the parties aforesaid, of the plea aforesaid, in this same court, until the fourth Monday of April, in the year one thousand eight hundred and fifty, at the court-house in the city of Buffalo. And the same day is given to the parties aforesaid at the same place to hear the judgment of the said court thereupon. At which last-mentioned day, before the said supreme court, at the place last aforesaid, come the parties aforesaid, by their attorneys aforesaid. And thereupon all and singular the premises being seen, and by the said court fully understood, it seemeth to the said court now here, that the verdict aforesaid of the jurors aforesaid, in form aforesaid given, is in all respects good and valid in law, anything in the said bill of exceptions contained to the contrary thereof in any wise notwithstanding.

Therefore, it is considered by the said court that the said plaintiff do recover against the said defendants eight hundred and twenty-five dollars for his damages aforesaid, in form aforesaid assessed. And also three hundred and eighty-eight dollars and eighty-three cents, for his costs and charges by him about his suit in this behalf expended, by the court now here adjudged of increase to said plaintiff and with his assent—which said damages, costs and charges, in the whole, amount to twelve hundred and thirteen dollars and eighty-nine cents. And the said defendants be in mercy, &c.

Judgment signed this thirteenth day of December, in the year of our Lord one thousand eight hundred and fifty.

M. G. SOPER, *Clerk*.

Filed 13th December, 1850—11 a. m.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals held at the capitol in the city of Albany, on the twenty-second day of October, in the year of [L. S.] our Lord one thousand eight hundred and fifty-two, before the judges of said court. Witness Charles H. Ruggles, esquire, chief judge.

CHARLES S. BENTON, *Clerk*.

JOHN BLACKSMITH, respondent,
ag't
ROBERT KENDALL & ANOTHER, appellants.

Be it remembered, that on the thirteenth day of January, in the year of our Lord one thousand eight hundred and fifty-one, the appellants in this action came here into the court of appeals by J. L. Brown, their attorney, and John C. Spencer, their counsel, and filed in the said court their notice of appeal, and return thereto from a judgment of the supreme court. And the respondent in said action afterwards appeared in said court of appeals, by John H. Martindale, his attorney and counsel, which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed. Whereupon the said court of appeals, after having heard this action argued by Mr. John C. Spencer, counsel for the appellant, and by Mr. John H. Martindale, counsel for the respondent, and after due deliberation having been had thereon, did order and adjudge, that the judgment of the supreme court, appealed from in this action, be in all things affirmed. And it was further ordered and adjudged, that the respondent recover against the appellants his costs of appeal in this court, and also interest on the amount of the judgment of the supreme court, by way of damages for the delay and vexation caused by the bringing of the appeal in this action. It was also ordered that the record and proceedings be remitted to the supreme court, there to be proceeded upon according to law. Therefore, it is considered, that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength and effect, which said costs are now here fixed and adjusted at the sum of $99 05. And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said supreme court before the justices thereof, &c.

CH. S. BENTON, *Clerk*.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *October 25th*, 1852.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached.

CH. S. BENTON, *Clerk*.

In Supreme Court, at Special Term, in Genesee county, March 12th, 1855.—Present: Justice Greene.

JOHN BLACKSMITH
ag't
ROBERT KENDALL & JOSEPH FELLOWS.

The judgment rendered herein at general term in favor of the plaintiff, against the defendants, having been removed to the court of appeals for review, by an appeal taken therefrom by the defendants in the lifetime of all the parties, and the said judgment having been affirmed by the judgment of the court of appeals on such appeal, and the record and proceedings, together with the judgment of the court of appeals, having been remitted to this court, according to the form of the statute in such case made and provided, to be enforced according to law; and John Blacksmith, the plaintiff in this court, and the respondent in the court of appeals, having since said appeal died intestate, and administration of his goods and chattels, and credits having since his death been granted, in due form of law, to Susan Blacksmith and Ely S. Parker; and the defendant, Robert Kendall, one of the appellants in the court of appeals, having since said appeal died intestate, and no administrator of his goods, chattels and credits, having been granted, upon reading and filing the remittitur from the court of appeals, containing the judgment of that court, and the record and proceedings aforesaid; and on reading and filing a stipulation, from which the foregoing facts touching the death of said parties and the granting of administration aforesaid, fully appear; and after hearing Mr. Martindale, of counsel for the said administrators of Blacksmith, and Mr. Brown, of counsel for said Joseph Fellows, the survivor of Kendle, it is ordered, that, for the purpose of enforcing the said judgment of the said court of appeals, the same do stand revived in favor of said administrators against the said Joseph Fellows, so that the same be and stand in the same plight and condition as it would have been in had the said Blacksmith and Kendle died, and said administration of the goods, chattels and credits of Blacksmith been granted after the judgment in this court and before said appeal, and the appeal afterwards taken by said Fellows, as survivor, &c., against the said administrators, pursuant to the statute in such made and provided, so that the said administrators may have execution against the said Joseph Fellows, to enforce the said judgment of the court of appeals according to the statute in such case made and provided. And it further appearing to this court, that the said Joseph Fellows has sued and prosecuted out of

the Supreme Court of the United States a writ of error to reverse the said judgment of the court of appeals:

Now, on filing said writ of error, and the bond ordered to be filed therewith, it is further ordered, that all further proceedings in this court be stayed until the decision of the said Supreme Court of the United States upon the writ of error aforesaid.

M. G. SOPER, *Clerk.*

Filed, 12th March, 1855.

SUPREME COURT OF THE UNITED STATES.

JOSEPH FELLOWS, survivor, &c., plaintiff in error,
vs.
SUSAN BLACKSMITH & ELY S. PARKER, administrators, &c., of John Blacksmith, deceased, defendants in error.

Of the term of December, in the year of our Lord one thousand eight hundred and fifty-five.

Afterwards, to wit, on the first Monday of December, in this same term, before the Supreme Court of the United States, comes the said Joseph Fellows, survivor, &c., as aforesaid, by Henry J. Glowacki, his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit: that, by the record aforesaid, it appears that the judgment aforesaid in form aforesaid given, was given for the said John Blacksmith, against the said Joseph Fellows and Robert Kendle, whom the said Fellows now survives; whereas, by the law of the land, the said judgment ought to have been given for the said Joseph Fellows and Robert Kendle, whom the said Fellows now survives, against the said John Blacksmith.

There is also error in this, to wit: that, by the record aforesaid, it appears that the judgment aforesaid in form aforesaid given, was given for the said John Blacksmith, against the said Joseph Fellows and Robert Kendle, whom the said Fellows now survives, against and in violation and disregard of the title of the said Joseph Fellows to, and his right of possession of, the close in question, which he claimed and had under and by virtue of the said treaty of the United States, of May 20th, 1842, and the indenture therein embodied and making part and parcel thereof in the said record set forth; whereas, by the true construction of the said treaty, and the indenture therein embodied and making part and parcel thereof, the said close in question, at the time of the entry complained of, was, under and by virtue of said treaty and indenture therein embodied and making part and parcel thereof, upon the facts disclosed in the record aforesaid, the close, soil and freehold of the said Joseph Fellows and not of the said John Blacksmith, and the said Joseph Fellows was, under the treaty aforesaid, then entitled to the possession thereof. Wherefore, the said judgment should

have been given in favor of the said Joseph Fellows and Robert Kendle, whom the said Fellows now survives, against the said John Blacksmith, and in favor of the said title and right of possession of the said Joseph Fellows, and not against the same, as by the record aforesaid it appears to have been given.

And the said Joseph Fellows prays that the judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment.

HENRY J. GLOWACKI,
Attorney for Plaintiff in Error.
B. PRINGLE,
Of Counsel for Plaintiff in Error.

Filed, November 14, A. D. 1855.

SUPREME COURT.

SUSAN BLACKSMITH AND ELY S. PARKER, Administrators, &c., of John Blacksmith, deceased,
agst.
JOSEPH FELLOWS, Survivor, &c.

STATE OF NEW YORK,
Genesee County, ss:

I, Merrill G. Soper, clerk of the supreme court of the State of New York for the county aforesaid, do hereby certify to the Supreme Court of the United States that the judgment of the court of appeals of the said State, (containing the bill of exceptions taken by the defendants, and the judgment of the supreme court, which by the said judgment of the court of appeals is affirmed, and all of which have been remitted to and now remain in the supreme court of said State,) the order of revivor and the assignment of errors to which this certificate is annexed, are respectively true and correct transcripts of the respective originals thereof remaining on the files of my office in the above entitled cause; that I have compared the said transcripts with the originals thereof respectively, and that they are correct transcripts therefrom respectively and of the whole of said originals.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said supreme court at Batavia, in said State, this 14th day of November, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

[SEAL.]

M. G. SOPER, *Clerk.*

Fee $16 75.

SUPREME COURT OF THE UNITED STATES.

JOSEPH FELLOWS, survivor, &c., plaintiff in error,
vs.
SUSAN BLACKSMITH & ELI S. PARKER, administrators, &c., of John Blacksmith, deceased, defendants in error.

December Term—1855.

And hereupon, afterwards, to wit, on the first Monday of December, in this same term, the said Susan Blacksmith and Eli S. Parker, administratrix and administrator, &c., by John H. Martindale, their attorney, freely come here into court and say that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and they pray that the said Supreme Court, before the aforesaid justices thereof, now here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may in all things be affirmed, &c.

JOHN H. MARTINDALE,
Attorney for Defendants in Error, and of Counsel.
S. G. HAVEN, *Attorney, &c.*